RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

सत्यमेव जयते

# महाराष्ट्र शासन राजपत्र

## भाग एक–ल

वर्ष ५, अंक ५०] गुरुवार ते बुधवार, फेब्रुवारी १३-१९, २०१४/माघ २४-३०, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

## प्राधिकृत प्रकाशन

**(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.**

### IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 324/1998.—Bombay Plastic and General Employees Association, 201, Sai Charan Building, B. P. Cross Kharigoan Talao Road, Bhayander (E.)—*Complainant V/s.*—(1) M/s. Swami Vivekanand Education Society, "Neelam", Third Floor, Worli Seaface, Mumbai 400 018, (2) Shri J. T. Vadwani, President, Swami Vivekanand Education Society, "Neelam", Third Floor, Worli Seaface, Mumbai 400 018, (3) The Principal, Swami Vivekanand Vidyalaya and Junior College, Nehru Nagar, Shivsrushti Road, Kurla (E.), Mumbai 400 024, (4) The Principal (Primary School), Swami Vivekanand Vidyalaya and Junior College, Nehru Nagar, Shivsrushti Road, Kurla (E.), Mumbai 400 024, (5) The Principal, Swami Vivekanand High School, Tulsi Technical Institute, Primary and Secondary School, Collector Colony, Chembur, Mumbai 400 074, (6) The Principal, Swami Vivekanand High School, Marathi Medium, Thakkar Bappa Colony, Chembur, Mumbai 400 071, (7) The Principal, Swami Vivekanand High School, English Medium Primary School, Sindhi Colony, Chembur, Mumbai 400 071.—*Respondents.*

CORM.— Shri P. B. Sawant, Member.

*Appearances.*— Shri R. V. Sankpal, Advocate for Complainant.
Shri Rajesh Hukeri, Advocate for the Respondents.

**Judgment**

(Dictated in open Court)

1. Bombay Plastic and General Employees Association has filed the present complaint alleging that the Respondents have followed unfair labour practice under items 1(a), (b) of Schedule II and items 6, 9 and 10 of Schedule IV of the M. R. T. U. and P. U. L. P. Act. The

facts which gave rise to the present litigation can be stated in nutshell as below :—

2. The Respondent No. 1 is a Society registered under Maharashtra Co-operative Societies Act and public Trust. The Respondents are mainly engaged in running school and college at various places. Though the Society is functioning since last many years, they are employing the workers on temperary basic and without giving any appointment letters. The provisions of E. S. I. Act, Provident Fund Act are applicable to the Respondents but the Respondents have failed to and neglected to contribute for the workers. Though the workers have completed 240 days, they are kept as temporary by depriving the status and privileges of the permanent employees. This practice is going on since last many years. The Respondents are covered under the Model Standing Orders as they have employed more than 50 employees.

3. The Respondents are not maintaining any record such as Muster-*cum*-Wage Register and the salary to the employees shown in Annexure 'A' is paid on vouchers, of Janata Seva Mandal which is apparently illegal. Therefore, the employees in Annexure 'A' joined the union which was intimated to the Respondents about the formation. But since then, the Respondents started threatening the workers to leave the union and termination of service if not left the concern with the union. The charter of demands were served on the Respondents. It is the contention of the Complainant that the Respondents have no intention to give permanency and the benefits to the workers and have implemented the threats by not allowing these employees working at Swami Vivekanand Vidyalaya Primary School from 7th March 1998. The Complainant has apprehension that the services of the employees will be terminated without following due process of law, though the Respondents are having sufficient number of vacancies in the permanent cadre.

4. It is alleged that the Respondents are changing their working hours. Prior to December, 1997, the workers were working 10 hours a day but thereafter, the Respondent is forcing the workers to work for 5 hours a day without informing the workers in writing. It is pointed out that the workers were paid at a very late and are not being given their regular work as they have become the member of the Complainant union. With this and other grounds, it is alleged that the Respondents by their such activities have indulged into unfair labour practice and, therefore, it is prayed that the Court should declare to that effect and also that consequentially the Respondents be directed to give permanency and the benefits and minimum wages to the workers for whom the complaint has been filed.

5. The Respondent has resisted the contention in the complaint by filing its written statement *vide* Ex. C-4 contending *interalia* that the complaint is not legal and proper and is liable to be dismissed. It is further contention that the complaint is not maintainable for the preliminary point being raised in the written statement.

6. It is the contention that the complaint does not satisfy the requirement of Regulation 100 under the M.R.T.U. & P.U.L.P. Act. The allegations raised in the complaint are vague and baseless. It is further pointed out that the Complainant union is not competent and authorised to represent the employees employed in the Educational Institution even under its Constitution and bye-laws. The Complainant, according to the Respondents, is not registered under the Trade Unions Act. The Complainant has not produced any membership register or Constitution etc. Since the complaint is against various Educational Institution, this Court will have no jurisdiction to grant any relief to the concerned employees under the M. R. T. U. & P. U. L. P. Act. It is pointd out that under the enactment of 77, there is a remedy specifically being provided for the concerned employees that no relief can be granted to them under the M.R.T.U. and P.U.L.P. Act. The complaint is not maintainable because it has clubbed multiple causes of action against 5 different Institution. It is also pointed out that the complaint is filed beyond the period of 90 days. Therefore, it is time barred. The Respondent Nos. 3 to 7 have been

brought on record after amendment. Therefore, no complaint with the retrospective effect can be allowed. On that count also, the complaint is not maintainable. It is pointed out that nominclature of the Respondent Nos. 3 and 4 have been wrongly given. There is no such Institution as named by Respondent No. 6. The complaint is, therefore, against non-existening Institutions described as Respondent Nos. 2, 4, 6 and 7. On this preliminary point, it is prayed that the complaint be dismissed with costs.

7. It is further contention of the Respondent that whatever allegations being made by the Complainant are totally false and frivolous and not liable to be looked into. It is denied that the Respondents have followed any unfair labour practice. It is denied that the Respondent is a Society registered under the Co-operative Societies Act. It is denied that the Respondent is employing more than 100 workers and also denied that the provisions E. S. I. Act and Provident Fund Act are applicable. It is denied that the workers are exploited by the Respondent. The allegations overall are false, bogus and baseless. It is pointed out that the charter of demand dated 18th February 1998 has already been settled as per the settlement dated 28th February 1998. The Respondent has denied that they have ever threatened the office bearers of the Complainant union or to the employees. It is denied that the Respondent has no intention to give permanency benefits to the workers. It is denied that the Respondents did not like formation of the union. The contentions about the working hours have been denied and also denied that the notification under the minimum wages Act is applicable to the society or any of the institution. In overall, it is contended that no unfair labour practice has been established. It is pointed out that the workers at Sr. Nos. 6 to 11 have not been reporting for duty and have been absconding. There is a police complaint against them for assaulting one of their co-employee. They have initiated the proceedings under the Industrial Disputes Act for their alleged illegal termination. Therefore, the present complaint is barred under Section 59 of the M. R. T. U. & P. U. L. P. Act. With this and other grounds, it is prayed that the complaint be dismissed with costs.

8. The Respondent No. 5 has resisted the complaint by filing written statement Exh. C-6 and reiterated all the contentions made in the written statement filed by the Respondent No. 1 and also raised a preliminary objection regarding maintainability of the complaint. Rest of the portion is apparently similar to that of the contents in the written statement filed by the Respondent No. 1. Therefore, those are not reiterated but only contended that the Respondent No. 5 has denied of following of unfair labour practice of any sort and prayed for dismissal. Even on the preliminary objection as well as of not establishing any ground for allegation against the Respondent to have followed unfair labour practice.

9. The Respondent No. 3 has filed its written statement *vide* Exh. C-5 and denied all the adverse allegations in the complaint contending *interalia* that the complaint is false and frivolous and is liable to be dismissed. The Respondent No. 3 has also raised preliminary objection regarding the maintainability of the complaint and that of the grounds which has been raised by the Respondent No. 1 in the written statement. Therefore, all these averments are not reiterated but it appears from the submissions that the Respondent No. 3 points out that none of the persons in Annexure 'A' to the complaint have been found working with the Respondent No. 3 Institution. It is, therefore, pointed out that the Respondent No. 3 has engaged services of the workmen at Sr. Nos. 1, 2, 4 and 5 as Part Time Casual Sweepers. The Respondent denied that the workers have been exploited. It is pointed out that the work of sweeping is done when the students are not present in the Institution. During the period of Diwali Vacation and May Vacation, the services of the workmen are not required. Therefore, the Respondent has denied that all these workers can be said to be in a continuous service. With all these contentions, it has been submitted that the complaint is false and frivolous and the same is liable to be dismissed.

10. With all these averments, following issues are framed at Exh. O-5 :—

| *Points* | *Findings* |
|---|---|
| (1) Does the Complainant prove that the Respondents have followed unfair labour practices within the meaning items 1 (a), 1(b) of Schedule II and items 6, 9 and 10 of Schedule IV of the M. R. T. U. & P. U. L. P. Act ? | Negative |
| (2) Does the Complainant prove that the workmen in Annexure 'A' have completed 240 days service and are entitled for a status of a permanent employees with all privileges ? | Negative |
| (3) Whether the Complainant is entitled for the declaration as prayed ? | Negative |
| (4) To what relief and order, the Complainant union is entitled to ? | No relief |
| (5) What is the declaration and order ? | As per final order. |

**Reasons**

11. *Point No. 1.*—The averment pertaining to following of unfair labour practice relates to continuous service rendered by these employees shown in Annexure 'A' to the complaint. The tenure envisages that they have been working with the establishment as per the whims of the Respondent and thereby they are being exploited so far as their duty hours are concerned as well as their pay-scales and wages are concerned. All these propositions pertaining to employers high handedness and that of denying permanency benefits to the employees and thereby committing breach of the settlement and agreement will have to be construed by referring to the initial objection raised by the Respondents. Those objections refer to the very maintainability of the complaint and, therefore, needs to be construed first. Unless those aspects are being thrashed out, the allegations pertaining to following of unfair labour practice by the Respondent will not stand.

12. It is the first and foremost contention of the Respondents that the Complainant union has no locus for filing the present complaint on behalf of these employees. Irrespective of the fact that these employees were doing continuous work or not or that they were being denied the benefits of their services. I have referred to the documents on record which postulate the Constitution of the union referring to the preamble of forming the union of the employees working in the industry in Schedule 'A' annexed to the constitution. Admittedly, the constitution as produced before the Court does not bear the Annexure. It includes the membership register and the receipt book etc. Apart from that aspect, Learned Advocate Shri Sankpal for the Complainant has pointed out my attention towards the settlement entered into with the Complainant union that the Respondent Society known as Vivekanand Eduction Society. So far as nominclature of the Respondent No. 1 is concerned, the same has also been disputed along with other aspect of having its branches as being specified as Respondents by way of amendment which was carried out by the Complainant. The said aspect can be taken care of in the foregoing paras on discussion but still then, the question remains as to whether the union itself has a representative character so far as the employees in the education society is concerned. This anomaly can only be solved by filing relevant record from the Registrar of Trade Union who has registered the union and holds the relevant record with him. Therefore, I am desirous to call for the record first by issuing a summons to the Registrar of Trade Unions.

13. The union has produced the documents partaining to formation of union etc. Those were found incomplete. The record as put up by the Deputy Registrar, Trade Union comprises with form 'A' under the Trade Unions Act and the Constitution annexed to the said form gives the list of the establishment or undertakings wherein the union shall be working is also seen. On careful consideration of the said list, it is very clear that Annexure 'A' to the constitution does not include Educational Institution. The Respondents are the Institutions working in the educational fields. Therefore, we are aware from the purview for area of operations of the Complainant union. In other words, the Constitution of the Complainant union does not permit the Complainant union to form a union of those who are working in Educational Institutions, such as the Respondent Institution.

14. Learned Advocate Shri Sankpal has pointed out my attention towards earlier settlement entered into by the Complainant union with the Respondent Institution. There is no dispute so far as earlier settlements are concerned but under the assumption of law, the representation as being assumed by the Complainant union was not proper. Merely, the employer has settled certain issues with the union will not give any entitlement to the Complainant union to file a complaint with the allegations against the Respondents having committed unfair labour practice. Therefore, the Constitution of the Complainant union itself is very clear giving no right or entitlement to the union to form or organise the employees working in the Educational Institution. Once there is no right to form a union of the employees in this Institution, the question of having a representation of the employees who are working in the Education Institution does not stand.

15. Besides the above aspect, the registration of the Complainant union was once cancelled, the document does not specify that the registration was renewed from time to time. This particular aspect has been considered at a late stage because admittedly, during the course of the cross examination of the witness, the fact should be emerged about the representation of the employees in the Respondent Institution.

16. On this background, the issue as framed needs to be considered. The allegations of following of unfair labour practice has been raised on account of employees of the Complainant rendering continuous service and by virtue of which having completed 240 days. The evidence of Mrs. Anita Sonawane who is in the employment of Swami Vivekanand Vidyalaya Primary School which has been disclosed that she has been working continuously as per the directions given to her. The payment has been given on vouchers. Further evidence of Mrs. Anita Sonawane Exh. UW-1 refers to the timing of the school, duty hours and availability of the service of other employees who worked as a Peon or in likewise category. She has been terminated from service after raising voice through the union. She is agitating the same cause also through the union. The evidence of Mrs. Leelabai Ubale Exh.UW-2 is also in the nature of reiteration. She has also been paid on voucher and her attendance was marked on the note book instead of Muster-roll of the usual employees. The vouchers are on record. It is pertinent to note that the vouchers Exh. C-11 and Exh. C-12 disclose that the witness was getting her wages on the voucher of Janata Seva Mandal. Her evidence also discloses about the nature of work she has been rendering. The evidence of these employees has been considered at this stage irrespective of the fact of having coming to the conclusion while rendering the earlier observations. The maintainability of the complaint or the authority of the Complainant union to represent these employees, therefore, will have to be construed in the light of the fact of the contents in the Constitution of the union.

17. Shri Shantaram Patil has affirmed *vide* Exh. UW-3 that he has signed on the complaint as a Secretary of the union. He has admitted that there is no prayer of reinstatement of the employees who are already terminated. Keeping aside the said aspect, the question of following of unfair labour practice can only be gone into if the person agitating the matter is having a *locus* to agitate the same. The evidence of Mrs. Mayabai Exh. UW-4 is also in the nature of reiteration of the earlier version of the other employees. Therefore, though the vouchers are disclosing the span of these employees on record, the mode of raising the dispute through the union does not appear to be based on the legal footings. A complaint under section 28 discloses that :—

" Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or Investigating Officer may within 90 days of the occurence of such unfair labour practice file a complaint before the Court.....".

Under sub-section (*3*), there is a provision of appointing Investigating Officer for investigating the dispute but though this Court has not appointed Investigating Officer, the matter was proceeded ahead under the assumption that the union covered the establishment. The word "any union" therefore, will not postulate that a union which does not have a provision in the Constitution for forming a union of the employees of the establishment name of which is not annexed to the Constitution. The word "any union" therefore, has to be construed in the sense that the union having authority under the Constitution and having an area of operation in the establishment referring to the list annexed to the Constitution are the only union which can agitate the cause. The fact matrix of the instant case is totally different. Therefore, I have found it just that once the union itself has no *locus standi* to file a complaint or to organise the employees of the Educational Institution like the Respondent, it has no authority to allege against the Respondent having followed unfair labour practice. For that reason, the issues Nos. 1 and 2 as framed stand redundant.

18. *Issues Nos. 3, 4 & 5.*—These issues also deserve to be answered in the negative because once the Complainant union has no *locus standi* to file a complaint against this establishment, then the Complainant is not entitled for any declaration and consequential relief etc. Therefore, on this technical aspect, the complaint deserves to be dismissed. Hence, the order :—

**Order**

(*i*) The complaint is hereby dismissed.

(*ii*) No order as to costs.

(*iii*) The documents called from the office of the Registrar, Trade Unions, Mumbai shall be sent back forthwith to the said office.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 29th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 18th May 2002.

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**कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई**

कॉमर्स सेंटर, ताडदेव, मुंबई ४०० ०३४, दिनांक १० जून २००२.

क्रमांक औसं/औविअ/प्रसिद्धी/निवाडा/प्र. ६४/२००१/कार्यासन-७.—ज्याअर्थी, औद्योगिक विवाद अधिनियम, १९४७च्या कलम ३९(ब) चे अंतर्गत प्रदान करण्यात आलेल्या शक्तींचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्रमांक औविअ/१०८०/५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम १७(१) खाली शासनास वापरता येण्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई यांनाही वापरता येतील ;

त्याआर्थी, आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७च्या कलम १७(१) च्या खालील शक्तींचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई हे मे. बजाज इलेक्ट्रीकल्स लि., पुणे व या आस्थापनेत काम करणारे कामगार यांचे औद्योगिक विवादाबाबत शासन आदेश क्रमांक काआ/औसं/२के/सीआर-४३२(१७४)/९८/मु.का.३अ, दिनांक १२ जुलै १९९९ च्या संदर्भात औद्योगिक न्यायालय, पुणे यांनी दिलेला निवाडा क्रमांक १५/९९ प्रसिद्ध करीत आहेत.

## IN THE INDUSTRIAL TRIRUNAL, MAHARASHTRA AT PUNE

BEFORE SHRI VIDHYASAGAR KAMBLE, INDUSTRIAL TRIBUNAL

REFERENCE (IT) No. 15 OF 1999.—Adjudication Between Bajaj Electricals Limited (Matchwel Unit), Pune *And* The workmen employed under it.

In the matter of bonus for the year 1996-97 at the rate of 20%.

*Appearances.*— Shri Y. P. Vipradas for the First Party,

Shri S. B. Bombale Deshmukh for the Second Party.

AWARD

(Dated 19th April 2002)

The Commissioner of Labour, Maharashtra State, Mumbai, by exersing powers under section 10 (*1*) and section 12 (*5*) of the Industrial Disputes Act, 1947, has referred the dispute existing between Bajaj Electricals Ltd. (Matchwel Unit), Pune 411 014 and its workmen, for adjudicaction and to decide whether the workmen employed by the first party employer are entitled for bonus at the rate of 20% for the financial year 1996-97.

2. After the receipt of order of reference, statutory notices were issued to the parties concerned. In response to these notices, on behalf of the second party workmen, statement of claim is filed at Ex. U-6 by Shri Ashok Manohar, Joint Secretary, Sarva Shramik Sanghatana, Pune, who represents the employees employed by the first party company and in rebuttal, written statement dated 17th July 2000 at Ex. C-3 is filed by the first party employer.

3. In short, it is the contention of the second party workmen that after going through the audited balance-sheet and profit and loss account of the first party employer for the accounting year 1996-97, it will show that the first party company has earned huge profit. Hence, the second party workmen are entitled for 20% bonus. While denying this demand, in our and substance, it is the contention of the first party employer that the second party workmen have failed to justify their demand, no calculations are filed showing any profit, allocable surplus and available surplus etc. Thus, the second party workmen are not entitled for 20% bonus as claimed. Hence, prayed for rejection of the reference, as the second party workmen have failed to justify their demand.

4. To overcome this dispute between the parties, issues are framed for consideration at Ex. O-7 as under :—

(1) Whether the second party workmen have justified their demand for entitlement of bonus at the rate of 20% for the year 1996-97 ?

(2) What order ?

5. My answers to the aforesaid issues, with reasons, are as under :—

(1) Yes.

(2) As per final Award.

**Reasons**

6. No oral evidence is led by the second party workmen to justify the statement made in the statement of claim. However, on behalf of the first party employer, one Shri Shripad Ramchandra Halabe is examined at Ex. CW-1. The witess tried to point out the financial position from the profit and loss accounts and balance-sheets and stated that the first party company has no any profit, particularly, the first party company has no available surplus for consideration of 20% bonus as per the provisions of the Payment of Bonus Act, 1965.

7. With the help of this evidence and more particularly the documents filed on record by the first party employer, which are admitted by the second party workmen, heard oral submissions of Shri S. B. Bombale Deshmukh, learned Advocate for the second party workmen and Shri Y. P. Vipradas, learned Advoate for the first party employer. Further, written submissions filed on record by Shri Vipradas at Ex. C-17 are also minutely gone through.

8. In view of the nature of disputs in hand and controversy between the Parties, it is necessary to see when employees are entitled for maximum bonus under the provisions of the Payment of Bonus Act, 1965 (hereinafter referred as the Bonus Act). Section 11 of the Bonus Act gives such entitlement in favour of the workmen which reads as under :—

"Payment of Maximum Bouns-(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount is proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section."

9. In view of this provision, it is the duty of this Tribunal to find out whether the first party company has gained profit and after ascertaining the gross profit, to work out allocable and available surplus in accordance with the provisions of the Bonus Act. Maximum amount of bonus at 20% under the Bonus Act can only be awarded if the profit arrived at by the tribunal in accordance with the statuts has been such as to justify the award of bonus. Procedure is laid down under section 5 for computation of available surplus and under section 6, sums are deductable from gross profits. In view of these provisions, it is necessary to see whether the first party has computed available surplus after deducting sums as per section 6 or the Bonus Act. Under the Third Schedule, certain sums are allowed to be deducted from the gross profit. Item No. 1 of the Third Schedule is applicable to the first party employer. In view of this provision, let us see which sums are deducted by the first party employer from the gross profit and whether such deductions are in accordance with section 6 of the Bonus Act. Bonus calculation for the year 1996-97 is filed on record by the first party employer at page 63, Annexure 6 of Ex. C-13. Net profit is shown as Rs. 36,14,992. Computation of gross profits for the accounting year ended on 31st March 1997 is also placed on record at Pages 64 to 67 of Ex. C-13. On Page 67, in footnote 1, it is stated that :—

"Net profit as shown in the Profit and Loss Account after considering interest @ 18.35% on the opening balance of Head Office, amounting to Rs. 6,73, 35,290."

However, while computing available surplus, for the year 1996-97, gross profit for bonus is taken as Rs. 1,24, 19,055. The statement showing this calculation is on record at Page 68. Deduction under Section 6 (*a*) is shown as Rs. 70,56,892 towards depreciation, direct taxes as per Section 6 (*a*) nil and notional interest on opening balance of H. O. 18.35% of Rs. 6, 73,35, 290/-is shown as Rs. 1,23, 56,026. While deducting certain sums from the gross profit, it appears from this document that the first party employer has taken notional interest amounting to Rs. 1,23,56,026. It is to be noted that such sums are not allowed to be deducted under Section 6 of the Bonus Act. Under what provision, such sums are deductible is nowhere mentionded nor at the time of hearing, justified by the first party employer. Therefore, it is necessary on the part of this Tribunal to forget this sum amounting to Rs. 1,23,56,026. Only deductible sum will be Rs. 70,56,892. If this amount is accepted and deducted from the gross profit, certainly there will be available surplus with the first party employer. Since certain sums which are not allowed to be deducted from the gross profit for computation of available surplus are taken into consideration by he employer, therofore, it has shown allocable surplus as 'nil'. If this amount is neglected and computation is made, then after deducting Rs. 70,56,892 from the gross profit of Rs. 1,24,19,055, there will be total available surplus of Rs. 53,62,163. This will be available surplus with the first Party company. As per the Bonus Act, for computation of allocable surplus, it is worked out at the rate of 60% and thereupon it will come to Rs. 32,17,298 which will be allocable surplus with the first party employer. After such calculation in accordance with the provisions of the Bonus Act, it is crystal clear that the first Party employer is having sufficient available surplus and allocable surplus. If the first party employer is having available surplus and allocable surplus in view of Section 11 of the Bonus Act, the second party workmen are entitled for maximum bouns at the rate of 20%. Hence, I answer Issue No. 1 in the affirmative and hold that the second party workmen are entitled for bonus at the rate of 20% for the accounting year 1996-97 from the first party employer.

10. Before parting with this Award, it is necessary to point out some objections raised by Shri Vipradas, learned Advocate for the first party employer. These are, that reference deserves to be rejected, because oral evidence is not led by the socond party workmen, no cogent evidence is brought on record about the financial condition of the second party workmen, etc. To support this contention, Shri Vipradas, learned Advocate for the first party company invited my attention to the case law reported in *(1999 3% Supreme Court Cases 457* in the case of *Iswar Bhai G. Patel* alias *Bachu Bhai Patel* v/s. *Harihar Behara and another*. The Head Note upon which reliance is placed by Shri Vipradas reads as under :—

> "Evidence Act, 1872-Sc. 114, III. (*g*) and 106 Adverse presumption must be drawn against Defendant who does not present himself for cross-examination and refuses to enter the witness box in order to refuse allegation made against him or to support his pleading in his written statement."

11. I fully agree with the submission of Shri Vipradas that adverse presumption requires to be drawn if a party fails to affirm its contention. It is to be noted that in each and every case, oral evidence is not required at all. If the entire claim is based on documentary evidence, oral evidence is not required at all. Here, in the present matter, the entire disputs relates to the financial condition of the first party employer and the financial condition of the first party employer reflects only in the balance sheets and profit and loss accounts. It is to be noted that all balance-sheets and profit and loss accounts placed on record by the first party employer are admitted by the second party workmen along with its entire contention. Therefore, if the entire dispute rests upon such documentary evidence, to my thoughtful consideration, oral evidence in not required at all. Therefore, the principle laid down by the Hon'ble Apex Court in the case cited *(supra)* cannot be made applicable to the present dispute because the facts are totally different.

12. Further, Shri Vipradas, learned Advocate for the first party employer invited my attention to the case law reported in *1975 Lab. I. C. 963* between *Workmen of Hindustan Machine Tools I and II, Bengalore, and the Presiding Officer, National Tribunal, Calcutta and others.* The Head Note upon which reliance is placed by Shri Vipradas reads as under :—

" Payment of Bonus Act (1965), Section 6 (*a*) Third Schedule Items 1 (ii) and 5 Allocable deduction Amount advanced by Head Office to its units. "

13. I have already pointed out that certain sums are deductible from gross profit in view of Section 6 of the Bonus Act. The amount deducted by the first party employer under the head of Notional interest on opening balance of Head Office is not allowed to be deducted from gross profit in view of Section 6 of the Bouns Act. Therefore, considering the facts involved in the present case and the case referred above, the ratio to my humble opinion cannot be made applicable.

14. Now, coming to the last issue which is about relief. In the aforesaid premises, the concerned employees are entitled for bonus at the rate of 20% from the first party employer for the accounting year 1996-97, which should be paid by the first party employer. With this I pass the following order :-

**Order**

(1) Reference is allowed.

(2) It is held that the second party workman have justified their demand for 20% bonus. Hence, the first party employer is hereby directed to pay bonus to its employees at the rate of 20% for the accounting year 1996-97.

(3) In the circumstances, no order as to costs.

(4) Award be drawn accordingly.

Pune,
Dated the 19th April 2002.

VIDYASAGAR KAMBLE,
Industrial Tribunal, Pune.

(Sd/-)
Secretary
Industrial Tribunal, Pune,
Dated the 19th April 2002.

**नि. जा. गजभिये,**
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई.

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**कामगार आयुक्त,**

**महाराष्ट्र राज्य, मुंबई**

कॉमर्स सेंटर, ताडदेव, मुंबई ४०० ०३४.

दिनांक ६ जून २००२.

क्रमांक औसं/औविअ/प्रसिद्धी/निवाडा/प्र. ८२ /२००१/कार्यासन-७.—ज्याअर्थी, औद्योगिक विवाद अधिनियम, १९४७ च्या कलम ३९(ब) चे अंतर्गत प्रदान करण्यात आलेल्या शक्तींचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्रमांक औविअ/१०८०/ ५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम १७(१) खाली शासनास वापरता येण्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई यांनाही वापरता येतील.

त्याअर्थी, आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७च्या कलम १७(१) च्या खालील शक्तींचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई हे मे. रावळगाव व शुगर कार्म्स लि., मुंबई व या आस्थापनेत काम करणारे कामगार यांचे औद्योगिक विवादाबाबत शासन आदेश क्रमांक सीएल/आयआर/२के/४०९(१५१)/९८, दिनांक ११ नोव्हेंबर १९९८ च्या संदर्भात औद्योगिक न्यायालय, मुंबई यांनी दिलेला निवाडा क्रमांक ८४/९८ (भाग-१) /प्रसिद्ध करीत आहेत.

## INDUSTRIAL TRIBUNAL, MUMBAI

BEFORE SHRI M. L. HARPALE,

REFERENCE (IT) No. 84 OF 1998.—ADJUDICATION BETWEEN.—M/s. Ravalgaon Sugar Farms Ltd.—*And*—The Workmen Employed under them (Represented by Construction Employees Union)

In the matter of general demands Basic Scales of Pay, Fixed DA, HRA, Leave Facilities and other allowances.

*Appearance.*— Shri Shah, Advocate for the first party Company.

Shri Arshad Shaikh, Advocate for Second Party Workmen.

### Part-I Award

(Below Exh. U-2)

The second party workmen represented by the Construction Employees Union has filed this application for interim relief (hereinafter the Construction Employees Union is referred to as the Union and the first party Company *i.e.* M/s. Ravalgaon Sugar Factory Limited is referred to as the Company).

2. The Union has come with the case that it is a recognised union and it has a sole collective bargaining agent on behalf of the workmen concerned for the last 20 years, as it has been enjoying support of the workmen in the Company. It is further contended that the last of such settlement with regard to the service conditions was signed on 27th March 1990 between it and the Company. The said settlement expired on 31st March 1992. Thereafter, fresh charter of demands was served on the Company *vide* its covering letter dated 19th November 1992. It also called upon the Company to enter into the negotiations with the Union for the fresh revision in the service conditions. However, the Company flatly refused to concede to its request and tried to delay the new settlement. Thus from the year 1992 onwards, there has been no revision in salary scales and other service conditions. With the result, the emoluments of the workmen have remained stagnant since March, 1990, *i.e.* from the last settlement, despite steep rise prices of commodities. It is further contended that the workmen having been getting the Dearness Allowance on the basis of the DA scheme agreed in the year 1990, when the index numbers were 1060 on the basis of the index number in the year 1960. The entire scheme has become outdated and hardly nuetralise

small percentage of rise in consumer index number. It is further contended that the present reference deals with 19 demands. It will require time to record evidence and to decide the same. Therefore, it would be just and fair to claim interim relief in salary/dearness allowance with a view to cut down the economic hardships on the part of the workmen. The relief of Rs. 1000 p.m. per workman payable from 1st April 1992 would meet the present requirement of the workmen concerned in this reference. It is further contended that the workmen are entitled to the interim relief of Rs. 1000 per workman per month on the ground that there has been a very steep rise in the Bombay Working Class Consumer Index with 1960 base from the year 1990. The financial position of the Company is very sound. Three wage accords have become due as in the past and other grounds as given in this application. It is further contended that the Company could easily bear the burden of Rs. 1000 per workman per month by way of interim relief. Therefore, the Company be directed to pay Rs. 1000 per month to each of the workmen from the date of expiry of the last settlement *i.e.* 1st April 1992.

3. The Company filed its reply at Exh. C-4 to the present interim relief application Exh. U-2, through its Senior Manager (Finance and Legal). According to the senior Manager, there are about 36 workmen as on today out of which, only 8 workmen are the members of the Union, who is also not a recognised Union. Thus, the Union has not any representative character. He has further contended that M/s. Ravalgaon Sugar Factory Limited is one of the smallest companies in the list filed by Walchand Group of Industries. Its total unit staff members are small compared to the strength in other group of companies. Therefore, his company is following the Union Agreement afterother group companies have concluded their agreement. He has further contended that the Company's factory at Ravalgaon is classified as Unit in 'Sugar' Wage Industries' as per the decision of the Sugar Wage Board. Any difference in service conditions will upset the whole atmosphere. He has further contended that the Company tried its level best to arrive at amicable settlement and wrote a letter dated 27th May 1994 to the President of the Union. By the said letter, this Company informed the same pattern as applied to PCC Union agreement. The President of the Union also accepted the assurance. However, the President of the Union has not forwarded any copy of the agreement between the Union and the PCC Limited. Thus, the Union is responsible for arriving at the settlement of the demands. The delay is attributable to the Union itself and not due to his Company. He has further contended that all the workmen are getting their due annual increments as per the grade in existing settlement dated 27th March1990, even though some of the workmen have reached maximum of their grades of wages. In addition to annual increment, all the workmen are paid Dearness Allowance at the rate of Rs. 2.25 per point per month for rise in index. The workmen are also paid other allowances as per the said Settlement dated 27th March 1990. Therefore, it cannot be said that emoluments of workmen have remained stagnant since the Year 1992. The workmen have been adequately Compensated with more than 100% neutralization over the rise in Consumer Index Number, of Bombay. He has further contended that the demand for interim relief at Rs. 1000 per month per worker is exhorbitant. The granting of the claimed interim relife at the rate of Rs. 1000 per month in addition to the rise in wages from 1st April, 19 to 31st October 2000 will virtually amount to grant of final relief itself. Therefore, it is not sustainable in law. He has further contended that the Union has given Index Number of Bombay Working Class Since April, 1992 to June, 1999, but it failed to give particulars of VDA payments made to the workmen. He has further denied that the Company's financial position is strong and sound and it can easily bear the burden of the interim relief of Rs. 1000 per workman per month. On the other hand, the present emoluments are far and reasonable and that the application for the interim relief is only for the purpose of boosting its own material, Since the workmen are being adequately compensated with higher Dearness Allowance due to rise in Index

Number, the workmen are not eligible to get the interim relief at this stage. He has further contended that the Union has not made out a case for the payment of interim relief. Secondly, the Union could not produce a copy of the settlement nade with PCC Ltd. There is also no much difference between the wages of the supervisory staff and the workmen. The workmen are also getting nuetralisation of above 100 per cent and there is no need to consider the interim relief based on the cost of living index number. So considering all the facts, the application for interim relif Exh. U-2 be dismissed.

4. Heard the learned Advocates for both parties, at length. Considering their arguments and the material placed on record, the following points arise for my determination and I have recorded my findings there on for the reasons stated below :—

| *Points* | *Findings* |
|---|---|
| (1) Whether the second party workmen/Union have/has made out a *prima facie* case of grant of the interim relief ? | Yes. |
| (2) Whether the second party Workmen /Union are is entitled to any interim relief ? | Yes. |
| (3) What orders ? | As per the order below. |

**Reasons**

5. It is not disputed that lastly the Union entered into the settlement dated 27th March 1990 with the Company and the said settlement expired on 31st March 1992. Thereafter, there is no new settlement. On this point, it is the case of the Union that after expiry of the said settlement, fresh charter of demands was served on the Company by its covering letter dated 29th Noveber 1992 and thereupon called the Company to enter into negotiation with the Union for fresh revision in the service conditions. However, the Company flatly refused to conceded to its request. Hence, this matter came to be referred for adjudication to this Tribunal in the year 1998. On the other hand, it is the case of the Company that the Union is responsible for the pending demands as the Union failed to produce a copy of the agreement between the holding Company PCC Limited and the Union. The fact remains that after expiry of th last settlement dated 27th March 1990, there is no agreement with regard to the revision of pay scales within the period of 8/9 years.

6. The Company has raised several issues with regard to the *locus standi* of the Union. After its reply Exh. C-4, it suggested several issues wide Exh. C-7. out of them, two issues are as under :—

(1) Whether an Unrecognised Union can sponsor General Demands concerning only 8 workmen ? when there are more than 1000 workmen being represented by Malegaon Taluka Rashtriya Sugar Workers Union ?

(2) Whether when there is already a recognised Union "Malegaon Taluka Rashtriya Sugar Workers Union", Construction Employees Union without any recognition sought and given, excercise the power of the recognised union under law ? The learned Advocate for the Union has submitted that the workmen in the Company are represented by the Union which is recognised union by law and has been sole collective bargaining agent on behalf of the workmen concerned therein for the last 20 years as it has been enjoying support of the workmen working there. He has also submitted that the Union entered into several

settlements with the Company in the past. The last settlement dated 27th March 1990 was also signed by the Union. The fact with regard to the settlement in the past, including the last settlement between the Union and the Company, is not disputed by the Company. Therefore, at present it appears that the Union is the sole collective bargaining agent on behalf of the workmen concerned therein.

7. The learned Advocate for the Union has argued at length on the point of financial position of the Company. He has submitted that the Company's financial position is extremely sound. In support of his submissions, he has pointed out the figures of amount showing financial position as on 30th September 1998, as given in the reply Exh. U-2 which shows that its authorised capital as on 30th September 1998 was one lac preference share of Rs. 100 each and one lac equity shares of Rs. 50 each. Its subscribed and paid up capital was of 68,000 fully paid up equity shares of Rs. 50 each, which includes 16000 equity shares of Rs. 60 each issued as fully paid bonus shares by capitalisation of reserve. It a reserves and surplus were to the tune of Rs. 1605.85 lakhs as on 30th September 1998. These reserves consist of capital redemption reserve, debentures redemption reserve, investment allowance utlised reserve and surplus in profits and loss account. In the year ended 30th September 1997. Its profits were to the tune of Rs. 46,75,000 and the same has arisen to Rs. 3,42,33,000 at the end of 30th September 1998, the dividend declared was to the tune of 50 per cent on equity shares of Rs. 50 each. The Company has not denied these figures of amount. On the contrary, it has specifically stated in its reply Exh. C-4 that it has no commont to offer on the same Therefore, it appears that from the figures of amounts given above that the Company is financially extremely strong, as it has earned huge profits.

8. The Union has claimed interim relief of Rs. 1000 per workmen per month with effect from 1st April 1992, *i.e.* with retrosoective effect on the ground as set out in this interim relief application. The first is that, since signing of the last settlement, index number have risen from lips to bounds *i.e.* 1096 points compared with the index number of 2376 of April, 1999. Thus, the index figures have risen from 1142 points.The gap between the wage actually required by the workmen family for bare subsistence and the wages actually received has been widening day by day. But there is no revision in salary scale and other service conditions from the year 1992. As a result, the emoluments of the workmen have remained stagnant from the last settlement, though there is a steep rise in the pricess of essential commodities after the last settlement. On this point, the Company has made it clear in its reply Exh C-4 that though there is no settlement from the year 1992, it has given annual increments as per the grade in the last settlement to all the workmen. In addition to the annual increments, all the workmen are paid the dearness allowance at the rate of Rs. 2.25 per point rise per month for rise in the Mumbai Index. The workmen are also paid other allowances and given other benefits under the last settlement. Even if it is pressumed that the workmen are given dearness allowances and other allowances as per the last settlement, the fact remains that there is no settlement between the parties after expiry of the said last settlement and the fact of ever increasing trend of inflation and demination Value of rupees cannot be disputed. Further, the basic wages of the workmen have remained stagnant for want of revision in fixation of wage scales after expiry of the last settlement. Therefore, it appears substance in the submissions made by the learned Advocate for the Union that there is increase in the dearress allowance during the period from 1992. But at the same time, it is to be noted that the inflation during the period from 1992 onwards is rising day by day and the Value of rupee is decreasing.

9. The learned Advocate for the Company has submitted that the Union has asked the relief by way of interim relief of Rs. 1000 per worker per month from 1st April 1992 to meet the present requirement of the workmen. But the Union has not given the basis of calculation of the same. On this point, the learned Advocate for the Union has submitted that the present Reference involves

19 demands and it will require much time to produce evidence of both parties. Therefore, the present reference cannot be disposed of within short period. The Union, therefore, considers it just and fair to claim interim relief in salary and dearness allowance. From the submissions and the material placed on record, it shows that the Union does not want to give any calculation and to ask full relief and, therefore, it has asked for interim relief of Rs. 1000 per worker per month. On this point, the learned Advocate for the Company has submitted that the demand of the uhion for the interim relief is exhorbitant and high and by the said interim relief, the Union is demanding of complete relief and/or more reliefs, therefore, the interim relief is not just and fair. However, the Union could not give a figure of amount which would be just and proper.

10. Both the learned Advocats have argued of length, on the point as to whether the interim relief, if granted can be given retrospective effect. On this point, the learned Advocate for the Union has relied on the case of Walchand Nagar Industries V/s Construction Employees Union, reported in Writ Petition No. 198/2000 decided on 31st January 2000 by Hon'ble Justice R. M. Lodha, wherein such interim relief was granted. On the facts, Their Lordships have held that the Industrial Tribunal was only required to consider the broad facts, which it has considered and thogh some of the aspects like industry cum region principles have not been advertee, it does not mean impugn the interim award bad in law warranting unterference by this (High Court) Court in extra ordinary jurisdiction, particularly when no prejudice or hardship would be caused to the employer. It is further held that the payment, if any, made to the workmen shall be subject to the final award and would be passed by the Industrial Tribunal in a reference. Secondly, if ultimately the reference is decided against the union, the concerned workmen shall be liable to refund the amount so received and if they do not refund, it would be open to the employer to adjust the same from the future wages of the workmen. From the observations in the said case, on thing is clear that the interim relief/award can be granted in favour of the workmen. The learned Advocate for the Union has also produced xerox copies of some awards to show that such interim relifief can be granted with retrospective effect. The learned Advocate for the Company has accepted the legal position that such interim relief can be granted, but he has disputed for granting interim relief with retrospective effect. However, he could not show any legal bar for granting interim relief with retrospective effect. Therefore, it can be said that the interim relief of this award can be granted with retrospective effect.

11. The learned Advocate for the Union has submitted by referring the figures of working class consumer index number as given in the application Exh. U-2 that since signing of the last settlement, index numbers have risen by 1096 points compared with index number 2376 of April, 1999. Since expiry of the last settlement of 1990, the index Figures have risen by 1142 points. The Company by its reply Exh. C-4 has stated that the Union has given the above data without giving details of V.D.A payments made to the workmen during the said period. Thus, the Company has not disputed the figures of Bombay Working Consumer Index Numbers as given by the learned Advocate for the Union.

12. It is the contention of the Company that the workmen have adequately compensation more than 100 per cent nuetralization over the rise in the consumer index number of Mumbai Centre. A table average percentage of nuetralization is also given. On this point, the learned Advocate for the Union has submitted that the percentage of neutralization is not carried out by applying the fromula given in the case of Hindustan Lever Limited reported in *1994 II CLR 673.* On considering the facts, it appears substance in the submission made by the learned Advocate for the Union.

13. The learned Advocate for the Company has submitted that the present reference itself is invalid and not maintainable on the reason that the subsisting settlement being in force upto 31st May 2002, therefore, the demands are liable to be rejected. In support of his submissions, he has relied on two cases, one is Between Banglore Woollen and Cotton Silk Mills Ltd. *V/s* Their Workmen reported in *1968 II LLJ 555 (SC),* and the other is Between Herbartsons Limited And Their Workmen, reported in *AIR 1977 SC 322.* In the present case, the last settlement expired On 31st March 1992 and thereafter there is on settlement and therefore, the present reference is made to this Tribunal for adjudication of the general demands. It would not be just and proper to decide at this stage as to whether the present reference is maintainable by law, while deciding the application for interim relief Exh. U-2.

14. From the above discussions, it appears that there is no settlement after the last settlement expired on 31st March 1992. Meanwhile, 2/3 settlemens could have taken place and there would have been increase in basic wage of the workers. Thus, there is no increase in the basic pay of the workers dus to failure to sign new settlements and the workers have suffered financially. From the figures of amount showing financial position of the Company, it clearly shows that the Company is making the profits and its financial position is sound. Thus, it shows that the Union has made out a *prima facie* case for grant of interim relief and the balance of conveinence lies in favour of the workers. In the result, the Point No. (1) is decided accordingly.

15 Though there is no prayer to grant interim relief by giving retrospective effect, it would be just and fair in the interest of justice to grant interim relief from the date of the application for interim relief Exh. U-2, so as to minimise the financial burden of the Company. The workers are facing the financial difficulties on account of rise in essential commodities. In case, they are granted interim relief from the date of the application Exh. U-2, they would get relief to solve the Present financial position. So considering all the facts, I feel that the request of the Union for grant of interim relief with retrospective effect cannot be granted at this interim stage. In the result, the Point No. (2) is decided accordingly. with this, I proceed to pass the following order—

**Order**

(*1*) The application Exh. U-2 for interim relief is hereby partly allowed.

(*2*) The First Party Company is hereby directed to pay an amount of Rs. 1000 per month to each of the concerned workmen from the date of the said application.

(*3*) The First Party Company is hereby further directed to pay the amount within a month and continue to pay the same every month regularly till final award.

(*4*) Award part- I is accordingly passed.

M. L. HARPALE,
Member,
Industrial Tribunal, Mumbai.

Mumbai,
Dated the 27th March 2002,

K. G. SATHE,
Secretary,
Industrial Court, Mumbai.
Dated the 19th April 2002,

**नि. जा. गजभिये,**
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई.

## INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT.

REVISION APPLICATION (ULP) No. 44 OF 2002—IN COMPLAINT (ULP) No. 190 OF 2001.—Sunil Kedar Singh, Pandhere Chawl, Nali Pada, Opp. Tulsi Dham, Krishna Glass, Sandoi Baug, Kapur Bawadi, Thane (West)—*Applicatint—V/s.*—(1) Kopran Ltd., Parijat House, 1076, Dr. E. Moses Road, Worli, Mumbai 400 018, (2) Surendra Somani, Kopran Ltd., (3) Shri C. M. Sharma, General Manager (Factory), Kopran Ltd., K-4/4, Addl. M.I.D.C., Birwadi, Mahad, Dist. Raigad, (4) Shri Sanghwar, Personal Manager (Factory), Kopran Ltd., Raigad, (5) Shri A. A. Lad, Presiding Officer, 2nd Labour Court, Mumbai, *Respondents.*

In the matter of application u/s. 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.— Shri U. R. Patil, President.

*Appearance.*— Shri Vinodkumar Singh, Ld. Advocate for the Applicant.
Shri Sunil Shroff, Ld. Advocate for the Respondets.

### Oral Judgement

(2-5-2002)

The present Revision Application is preferred by the Original Compainant *viz.* Shri Sunil Kedar Singh feeling aggrieved of the order below Exh. U-2 dated 24th October 2001 whreby the 2nd Labour Court, Mumbai rejected the Application Exh. U-2 of the Complainant which was for interim relief *i.e.* particularly that the Respondents be restrained from terminating the services of the workman as and by way of unfair labour practice and to pay the earned wages of the complainant by cheque as on 10th of every month, etc.

2. The brief facts giving rise to the case may be stated as follows :—

Record reveals that the Complainant joined the services of the Respondent as a Driver w. e. f. 1st June 1996. It is contendet that the Complainant worked with the Respondent till 1st January 2001 *i.e.* till he was orally terminated. Complainant claims that he worked sincerely in the above tenure and did not invite any stigma, memo or charge-sheet. It is submitted that the Respondent is a Private Limited Company, registered under the Companies Act, 1956, having office at the address mentioned in the Complaint. It is stated that Respondent No. 2 is the actual Owner and Director of Company, Respondent No. 3 is the General Manager of the Company and Respondent No. 4 is the personel manager of the company.

3. According to the Complainant, Respondent No. 1 is engaged in the business of manufacturing drugs/dyes, chemicals, medicines, pharmaceuticals and under the control of Respondent No. 2 having branches in several places in Mahrashtra State and is one of the reputed Company in this line. It is also contended that the Company has about 300 workers in their establishment.

4. Complainant's submission is that after appointment he worked with the Respondents ander the supervision of Respondent Nos. 2, 3, and 4 and was paid by them. The Personnel Manager Shri Sanghwar orally told the Complainant on 3rd January 2001at about 3-00 p.m. that he should not come on work as there is an order of the Head-Office. It is further contended that 1st Respondent is not interested in keeping the Complainant in employment and he was asked to leave the place. On hearing the same, Complainant met Respondent No. 4 and requested not to take such drastic action of termination of which he was not heard. Complainant further states that it is an illegal termination which effected him from 1st January 2001 though he was intimated on 3rd January 2001. In substance, the Complainant's griavance is that the said oral termination from services without following due process of law is nothing but illegal, improper, unjustified act on the part of the Respondents. Thus on these and other grounds, the Complainant requested for interim reliefs, referred to above.

5. The Respondents by filing their Reply at Exh. C-3 resisted the Application and the same may be narrated as follows:—

It is stated that the Complaint filed by the Complainant under the M.R.T.U. and P.U.L.P. Act, more precisely under item 1(a),(b),(d) of Sch. IV is totally misconceived, untenable and the same is liable to be dismissed in limine. It is submitted that Complainant was appointed as a Driver at the factory at Khopoli and he was transferred from Khopoli to its factory at Mahad. He was driving the car of Sr. General Manager (Works), who resigned from the services and Company has not appointed any General Manager in his place.

6. It is one of the contention that due to the recession in the market and to save from the losses, incurred to the Respondent, the Management decided to withdraw the facility of Drivers to Senior Executives and therefore the services of the Complainant were terminated by paying one month's salary in lieu of notice pay and other legal dues. By way of caution, retrenchment compensation was offered of 15 day's salary for every completed year of service, amounting to Rs. 14,482 and the same was offered to the Complainant. Respondent further states that though the said amount was offered, but the Complainant refused to accept the same. According to Respondent, they have followed the provisions of law and have taken the decision of retrenchment which cannot be interefered at this stage. It is also stated that since the Complainant was appointed at Khopoli and he was transferred to Mahad District, the territorial jurisdiction regarding the alleged dispute falls within the jurisdiction of Thane Court and therefore the Labour Court, Mumbai has no jurisdiction as the Complaint itself is not maintainable. Thus on these and other grounds, the Respondent states that the Complainant has not made out *prima facie* case for granting the relief and the same may be dismissed.

7. I have called for the record and proceedimgs and gone through the same. Heard Mr. Vinodkumar Singh, Ld. Advocate for the Applicants and Mr. Sunil Shroff, Ld. Advocate for the Respondent. The following points arise for my determination with my findings thereon, as below:—

*Points.*—

(1) Whether Revision Application (ULP) No. 44/2002 is to be allowed by setting aside the order below Exh. U-2 dated 24th October, 2001 passed by the 2nd Labour Court, Mumbai ?

(2) What order and relief ?

*Findings.*—

Point No. 1—Partly allowed.

Point No. 2—Please see final order.

**Reasons**

8. *Point No.1.*—It is seen that Shri Sunil K. Singh joined as a Driver with the Respondent w.e.f. 1st June 1996 and it is his grievance that despite the good service record, his services have been orally terminated w.e.f. 31st December 2000 Mr. Vinodkumar Singh, Ld. Advocate for the Applicant submited that after 31st December 2000 the Complainant went to the Office continuously for 3 days and on 3rd January 2001 he was orally informed/intimated that he should not come to the office. Mr. Vinodkumar Singh pointed out from the record that after the appointment, the Complainant worked with the Respondent under the supervision of Respondent No. 2, 3 and 4 and was paid by them. The Personnel Manager Shri Sangwar orally terminated his services on 3rd Januaury 2001, saying that there is an order from the Head-Office. In view of this, According

to Complainant's Advocate, the said abrupt termination of services of the Complainant is illegal and not proper because the Respondent *i.e.* the employer have not followed due process of law. In support of his submission he invited my attention to the appointment letter dated 1st June 1996 and thereby canvassed that it is issued by the Registered Head Office which is at Worli and all the administration of the other Offices *i.e.* of Khopoli, Mahad is looked after the Head-Office, Worli and therfore the termination order which is issued by the Head-Office is illegal one and the same has been challenged by the Complainant in the Labour Court, Mumbai which has got jurisdiction to entertain and try the Complaint. According to Applicant's Advocate, the Respondent employer has not followed the legal procedure and therefore it has committed unfair labour practice u/s. 28 read with the items, referred to above and since 31st December 2000 the Complainant is out of employment though he is legally entitled to be continued in the service of the Respondent employer.

9. On going through the impugned judgment passed by the Labour Court, it shows that the Labour Court has in the impugned judgment held that the Labour Court, Mumbai has no jurisdiction to entertain and try the Complaint and also the Interim Relief Application of the Complainant because the Complainant was appointed at Khopoli and he was transferred to Mahad District, hence the territorial jurisdiction regarding the alleged dispute falls within the jurisdiction of Thane Court. The said view taken by the Labour Court appears to be not legal and proper for the simple reason that the appointment letter dated 1st June 1996 shows the address of the Company- " Office.–Parijat House, 1076, Dr. E. Moses Road, Worli, Mumbai 400 018 " and in the said appointment letter there is a specific mention in Clause No. 19 regarding "Jurisidiotion." which states that letter will be subject to the jurisdiction of the Bombay Courts only." Thus the aforesaid condition which is binding on the parties clearly lays down that the jurisdiction in respect of the dispute can be solved by referring to the Bombay Court only. In the light of the aforesaid position, it clearly indicates that though the Complainant was appointed at Khopli and thereafter transferred to Mahad, that does not mean the oral termination can be challenged only at Thane Labour Court. The observation made by the Labour Court in the impugned judgement is totally silent regarding the appointment letter and the jurisdiction clause, referred to above. In view of this factual position supported with the documents relied by the Complainant, it clearly indicates that the conclusion drawn by the Labour Court that the said Court has no jurisdiction to entertain the Complaint and the Interim Relief Application and the same should have been filed before the Thane Labour Court, appears to be an error on the face of the record.

10. Mr. Sunil Shroff, Ld. Advocate for the Respondent submitted during the course of arguments that even the Respondent has no objection if the Present Complaint is transferred to Thane Labour Court or it be tried before the Labour Court , Mumbai. It is necessary to place on record that when the appointment letter issued to the Complainant by the employer specifically gives the jurisdiction for solving the dispute to Mumbai Labour Court, the question of by consent tansfer of the Complaint to Thane Labour Court does not arise. As Mr. Shroff has clearly consented for trying he Complaint by the Labour Court, Mumbai, I don't find that anymore discussion is necessary while deciding this point and I come to the conclusion that only Labour Court, Mumbai can have a jurisdiction to try the Complaint in question.

11. Now I have to see whether the Complainant is entitled for the interim relief *i. e.* to restrain the Respondents from terminating his sarvices, directing the Respondents to pay earned wages to the Complainant by cheque on 10th day of every month and other reliefs. I am aware that Mr. Vinodkumar Singh, Ld. Advocate for the Complainant argued that the services of the Complainant who is a Driver have been orally terminated w. e. f. 3rd January 2001 and the said termination is without giving an opportunity to the Complainant. He canvased that the Complainant's appointment was as a 'Car Driver' and in the said appointment letter there is no

specific mention that the Complainant was to drive the Car only of Sr. General Manager, who has later on resigned from the Company. In substance, Mr. Vinodkumar, Singh, Ld. Advocate for the Complainant's *i. e.* Applicant herein stressed that though the said General Manager has resigned from the services, that does not mean the employer is empowered to terminate the services of the Complainant because the other Drivers are working with the Complainant and therefore the alleged oral termination is not according to law and the legal procedure and therefore he claimed that the Complainant has made out a *prima facie* case for granting the reliefs. Another contention was raised by the Applicant's Advocate that the Respondent employer has not followed the provisions of Sec. 25-N of the I. D. Act which lays down the condition precedent for retrenchment of the workman and therefore submitted that the Complainant's services have been terminated without following due process of law, which has caused irreperable loss to the Complainant and the Labour Court should have ganted the reliefs, as mentioned in the Interim Relief Application. To substantiate his submission, he invited my attention to a case reported in *1989 II CLR page 157* (M. S. Abobacker *v/s.* General Manager H. M. T. Ltd. and anr.). On going through this case, it shows that there was a problem for consideration u/s. 2 (oo) and 25-N. There was a retrenchment-Automatic termination of appointment– Loss of lien on the appoinment on account of overstaying of leave amounts to retrenchment within the meening of Sec. 2 (oo) of the Act.-If the provisions of S. 25-N of the Act not followed, the retrenchment would be invalid and the wrokman would be entitled to reinstatement. Thus relying on the said case, Applicant's Advocate stressed for the reliefs, referred to above.

12. At this stage, the submission of Applicant's Advocate cannot be accepted for the simple reason that there is a controversy regarding the termination of services of the Complainant. Mr. Sunil Shroff, Ld. Advocate for the Respondent pointed out from the record that a notice dated 30th December 2000 was issued to the Complainant terminating his services and thereby he was offered one month's salary *i. e.* for 30 days in lieu of notice pay and other legal dues. There is also another letter dated 1st January 2001 alongwith the full and final settlement of the Account of the Complainant. it appears from the record that the same was sent by Regd. Post at the address of the Complainant, but there is an endorsement of the Postman to the effect "Registered not accepted " and the said endorsement is dated 10th January 2001. At the time of arguments, Applicant's Advocate submitted that such a letter and the notice was never sent to the Complainant and it was not denied by him at all. Thus it shows that on the said point there is an controversy between the parties regarding the termination notice and also the settlement of account which was offered by the Respondent employer. I am of the view that considering the said dispute between the parties unless and until both the parites are given opportunity to lead oral and documentary evidence before the Labour Court regarding the termination of services *vide* notice dated 30th December 2000 and offering of full and final payment for settlement of account, at this stage no any relief can granted as urged by the Applicant's Advocate. It is significant to note that the interim relif claimed by Applicant in the Application Exh. U-2, as referred earlier, if granted, the same would amount to granting the reliefs, as mentioned in the Main Complaint. It is significant to note that in the rarest cases if strong *prima facie* case is shown, then only the Court can interfere for granting the final relief. As observed earlier, the controversy between the parties requires the evidence from both the sides regarding the termination, etc. and the interim relief exercising the revisional jurisdiction cannot be granted by this Cort.

13. The Labour Court has while deciding the *prima facie* case has observed in the impugned judgment in para No. 9 that unless and until the unfair labour practice is confirmed by the Respondent, the interim reliefs, as claimed by the Complainant cannot be granted. I don't find that there is any error or illegallity committed by the Labour Court while deciding the said issue in respect of *prima facie* case and balance of convenience, etc.

14. It is necessary to place on record that the powers conferred by Sec. 44 upon the Industrial Court empower it, in so far as evidence is concerned, to set aside the order under revision when the evidence on record, reasonably read, is incapable of supporting the order. In the case in hand, as observed earlier, when there is a controversy between the parties ragarding the receipt of the termination letter and the settlement of accounts, at this stage, it will not be proper to interfere in the impugned judgment passed by the Labour Court on the point of *prima facie* case and balance of convenience because the same is consistent to the record available before the Labour Court, as observed earlier. Hence, it is difficult in Revision to disturb and set aside the same. It is be noted that if the Complainant succeeds in the Main Complaint in proving the unfair labour practice adopted by the employer, as mentioned in the Complaint, he will get the relief of reinstatement with backwages, etc. and thus the Complainant can be fairly compensated. Therefore, I answer the Point No. I accordingly.

15. Before passing the final order, the Learned Advocate for the parties requested that if the Complaint is expedited and made time-bound, that will meet the ends of justice. The said submission, considering the points involved in the matter, appears to be proper.

16. *Point No. 1.*—In view of the foregoing reasons, the Revision is partly allowed and accordingly I proceed to pass the following Order :—

**Order**

(1) Revision Application (ULP) No. 44 of 2002 is partly allowed.

The observation of the Labour Court, Mumbai that it does not have jurisdiction to entertained and try the Complaint is not aside.

Complaint (ULP) No. 190 of 2001 is expedited and to disposed of by the Labour Court by the end of August, 2002. The parties and Advocates are directed to co-operate and Labour Court for expeditions disposal of the Complaint without taking uncalled adjournments.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai :
Dated the 2nd May 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 3rd June 2002.

## IN THE INDUSTRIAL COURT, MAHARASHTRA AT, MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER.

COMPLAINT (ULP) No. 248 of 2001.—M/s Malik Transport Co. 197, Sheriff Deoji (Chakala) Street, Mumbai 400 003.—*Complainant*— *Versus*—Vahatuk Kamgar Sena, Opp : Shivsena Shakha No. 79, Khar Nagar, Bandra (E), Mumbai 400 051.—*Respondent.*

CORAM.— Shri P. B. Sawant, Member.

*Appearances*.— Shri S. I. Kazi Advocate for Complainant.
No appearance on behalf of the Respondent.

### Order

1. The Complainant has filed the present complaint alleging against Vahatuk Kamgar Sena the Respondent that they have followed unfair labour practice within the meaning of items 1, 2 (*b*) and 5 of Schedule III of the M. R. T. U. and P. U. L. P. Act, 1971. The facts which gave rise to the present litigation can be summarised below.

2. The Complainant is a Partnership firm and has engaged in transportation of public goods all over India and has filed a complaint in the capacity of the employer. The Respondent is a trade union organising its membership amongst the employees employed in public goods transport, Mumbai. The Respondent union through its representative/agent is pressurising the employees in the Complainant firm to enroll its membership even though they have no interest and desire to do so. The employees have submitted the written letters to the Complainant that they have no desire or interest in the membership. Inspite of that, the representatives of union have been threatening and intimidating the employees to enroll their membership.They are pressurising the management to negotiate and deal with them or stage to face the time consequences.

3. On 21st March 2001, the Respondent forcibly entered into the company's Office and told the employees to join thier rally resulting into the establishment came to stand still on the said day. Further on day to day basis, they are also indulging in threatening and intimidating the Partners and managerial staff to deal with them and to sign the settlement envisaging substantial financial burden despite of the facts that the employees have already paid fare and reasonable wages. The representatives of the Respondent are openly abusing the managerial staff and are giving duragatory slogans.

4. It is further pointed out that the Complainant being engaged in public goods transport, the above said illegal and unjustified agitations resorted to by the Respondent union will result into serious disruption in movement of goods, loss of man hours and loss of business causing substantial loss to the company. Besides there is risk of danger to the lives of the managerial staff and loyal employees and the damages or obstruction to the valuable property. The Complaint asserts that if the situation continued, it may lead the Complainant closure of the business at Mumbai. Therefore, the Complaint has been filed and it is prayed that the Respondent be restrained from indulging into the activities of the Complainant establishment situated at various places and restrained them from threatening, intimidating, assaulting, man handling managerial stafff, executives, loyal employees etc.

5. The notice of the Complaint was served on the Respondent. The Respondent remained absent. The Complaint was order to proceed *ex-parte*. The Complainant was directed to file affidavit. Acordingly, Shri Joginder Malik has filed affidavit at Ex. C-9.

6. Considering the contents in the Complaint, short question arises for my determination is :—

| | |
|---|---|
| (1) Whether the Complainant has established that the Respondent has indulged into unfair labour practice as alleged ? | Affirmetive |

**Reasons**

7. The working of the Complainant establishment is no where disputed. The fact that there is union in the establishment of the Complainant is also no where denied. The existance of the Respondent union appears to have createds tense situation. Admittedly, when the employees of the transport agencies are not joining union.

8. The correspondence dated 20th April 2000 addressed by the Bombay Goods Transport Association to the Senior Inspector of Police. Deputy Chief Minister of Maharashtra State, Commissioner of Police and so also other degnitories clearly indicate that there were agitations and that the entire working of the Complainant establishment has become stand still on certain occasions. It appears from further correspondence Ex. 4 that the Complainant had approached the President of Bombay Goods Transport Association for intervention and also informing about the stoppage of work of force. Ex. 5 (colly) indicates the submission of the staff members working with the Complainant who have expressed that they have no desire to form a union or to join any union. All the employees have individually and collectively given in writing that they have to concern with the union and they have a faith in the management that they will look after the welfare of the employees. All these aspects clearly indicate that the employees appear to have been forcibly made to opt for the membership of the Respondent union. Besider the employees are being obstructed from joining to work. The staff members are also appear to have been forced in joining the union. Considering the wording under items 1, 2 (*b*) and 5 of Schedule III of the M. R. T. U. and P. U. L. P. Act, it is expressly expressed that the union is intending to instigate those employees. Those employees are admittedly do not intend to join the union. They are indulging in act of force, violence and this has reflected by the correspondence made to the various aurhorities refered above. They are acqutting on the work premises by gheraoing the members and staff members. This has also reflected from the record placed before the Court and the affidavit filed. The contents in the affidavit are no where being challenged or retaliated. Therefore, I have found that there is substance in the contention alleged by the Complainant. Hence, I have given my finding to the point in the affirmative and pass the following order :—

**Order**

(1) The complaint is allowed.

(2) It is hereby declared that the Respondent has indulged into unfair labour practices under items 1, 2 (*b*) and 5 of Schedule III of the M. R. T. U. and P. U. L. P. Act, 1971.

(3) The Respondent is hereby directed to desist from continuing to follow the unfair labour practices through its represetatives, hirelings permanently and thereby restrained from obstructing the loyal employees from entering the work place and obstructing the movement of goods and articles as well as customers and also indulging into gheraoing, shouting and making demonstrations with in the radius of 200 metres from forewell of the Complainant company's establishment situated at :—

(1) M/s. Malik Transport Co. 197, Sheriff Deoji (Chakala) Street, Mumbai-400 003.

(2) M/s. Malik Transport Co., 16, Manibai Compound, Rehnal Village, Dist : Thane, Bhiwandi.

(3) M/s. Malik Transport Co., J-7, Ansa Industrial Estate, Saki Vihar Road, Andheri (E), Mumbai-400 072.

No order as to costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Pune,
Dated the 20th April 2002.

S. R. Adav,
Dy. Registrar,
Industrial Court, Mumbai.

## BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 24 of 1997.—Shri Ganapati Sadhu Mali, R/o Latawade, Tal : Hatakanagale, District :Kolhapur—*Petitioner*—*Versus*—The Managing Director, Shri Chattrapati Shahu Sahakari-Sakhar Karkhana Ltd, Kagal, District : Kolhapur.

. . Respondent.

In the matter of Revision u/s 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocates.*— Shri V. M. Kuigade, Adv. for the Petitioner.
Shri R. G. Rane. Adv. for the Respondent.

### Judgments

This is a Revision by original Applicant challenging legality of order passed in Misc. (ULP) No. 1 95 by Labour Court, Kolhapur, wherby relief of restoring his Complaint, which was dismissed for default, is rejected.

2. Admittedly, present Petitioner (hereinafter referred to as the Applicant) filed Complaint (ULP) No. 173 of 1990 before the Labour Court, Kolhapur against present Respondent (hereinafter referred to as the Sugar Factory) alleging various unfair labour practices. The Complaint was dismissed for default on 23rd January 1995 on account of Applicant's absence.

3. The Applicant then filed above Application under section 31 (*2*) of M. R. T. U. and P. U. L. P. Act contending that his sister was sufferring from illness from 21st January, 1995 and hence was unable to inform his Advocate that he is unable to attend the Court on 23rd January 1995. Besides, Advocte engaged by him was of Sangli, was busy in Sangli Court and could not attend Kolhapur Court on 23rd January 1995. Thus, he was not deliberately absent on 23rd January 1995. As such, there was sufficient cause for his non-appearance. He further contended that the Sugar Factory will not suffer if the Complaint is restored to file. But he will suffer if the Complaint is not restored to file.

4. The Sugar Factory filed its say at Ex. 8 and traversed all material allegation made by the Applicant. It contended that the Applicant was firstly appointed as a slip-boy on daily wages on temporary basis in the crushing seasons of 1980-81 and 1981-82. No employment was offered to the Applicant in the next crashing season *i. e.* of the year 1982-83. The Applicant did not take any action and then filed Complaint (ULP) No. 173/90 on 30th October 1990 *i. e.* after lapse of 9 years. He was absent from time to time when the Complaint was kept for hearing. Eventually, the complaint is rightly dismissed.

5. The Sugar Factory further contended that reasons put forth for absence of Complainant and his Advocate on 23rd January 1995 are altogether false and there are no material documents to substantiate the same. Thus, there is no sufficient cause for restoring the Complaint. Finally, the Sugar Factory prayed for dismissal of the Application.

6. The Labour Court then beard both advocates observed that there is no documentary evidence regarding illness of Applicant's sister and disbelieved Applicant's plea. Ultimately, it rejected the Application by judgment and order dated 8th January 1997. The same is challenged in the Revision.

7. I heard both advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order dismissing the Application for restoration of the Complaint, is justifiable ?

(*ii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is rejected.

**Reasons**

9. Shri Kuigade, learned advocate representing the Applicant argued that Original complaint was dismissed on 23rd January, 1995 whereas restoration Application is filed on 16th Fubruary, 1995. It shows Applicant's deligency. Proceeding for restoration of the Complaint are not punitive one and Courts should be liberal in setting aside order of dismissal. 1 Let orginal Complaint be decided on merits and the Sugar Factory can substantiate its case therein. He placed reliance on decision in *Prakash Mishra V/s Central Institute for Cotton Research reported in 1986 Lab. I. C. at Page 745* (*Bom.*). Finally, he submitted that the Revision Appllcation be allowed by allowing original Application.

10. Shri Rane, Learned Advocate representing the Sugar Factory replied that there is absolutely no evidence to justify Complainant's non-appearance when his Complaint was called for hearing. The Applicant atleast should have produced a medical cretificate about illness of his sister. Bare pleadings are not substitute for evidence. Therefore, the Labour Court is well justified in dismissing the Application.

11. It is surprising to note that there is no Medical Certificate on record to show that Applicant's sistar was ill from 21st January 1995 onwards. Secondly, the Applicant has not even srtepped into witness box. There is, thus, no *iota* of evidence even to remoutely suggest that there was sufficient cause for his non-appearance on 23rd January 1995. Pleadings cannot be a substitute for evidence.

12. I am respectfully bound by the observations in decision relied by Applicants counsel. It is settled law that the wrods " sufficient cause " are to be construed liberally but there is no evidence on record even to decide adequacy thereof. More presentation of application without leading atleast oral evidence, in support threof, is of no help to the applicant. As such, observations in above decision are of no help to him.

13. Besides, this being a Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, this Court has very limited jurisdiction. It cannot re-appreciate the evidence. Unfortunetly, the applicant has not led any evidence which could have been appreciated by the Labour Court. I, therefore, find that Learned Labour Court is justified in dismissing the application for Restoration of Complaint. Consequently, I answer Point No. 1 in the affirmative and pass following order.

**Order**

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. Jadhav.
Member,
Industrial Court, Kolhapur.

Kohapur,
Dated the 18th March 2002.

V. D. Pardeshi,
Asstt. Registrar,
Industrial Court, Kolhapur.

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**BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, KOLHAPUR**

REVISION APPLICATION (ULP) No. 134 of 1994.—The Divisional Traffic Superintendent (DEFL) M. S. R. T. Corporation, Sangli Division, Sangli—*Petitioner—Versus*—Shri Dattatraya Bapusaheb Patil, A/o Khatav, Tal. Tasgaon, District : Sangli—*Respondent.*

In the matter of Revision U/s 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocates*— Shri A. N. Kulkarni, Law Officer for Petitioner.

Shri D. N. Patil, Adv. for the Respondent.

**Judgment**

This is a Revision by an Employer challenging legality of judgment and order passed in Complaint (ULP) No. 596/90 by Labour Court, Sangli, whereby, he is directed to reinstate his employee with continuity of service and full back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was working under present Petitioner (hereafter referred to as the State Road Transport Corporation) as a Conductor from the year 1980. He was on duty on 21st March 1990 and plying on bus on Miraj stand to Sangalwadi routs. The Corporation served a chargesheet on 21st March 1990 on him alleging misconducts under items 7 (j), 10, 22 and 44 (a) of Discipline and Appeal-Procedure mainly alleging that he issued tickets of lesser value than an amount of fare collacted from 5 passengers and further committed indiscipline by violating administrative orders of the Corporation. The Complainant denied all charges and then an enquiry took place. The Enquiry Officer held that Charges of misconduct under items 7 (j), 10 and 22 are proved. Uitimately, the Complainant was dismissed with effect from 12th December 1989. The Complainant then filed above Complaint on 19th December 1990 alleging that false statements were recorded and, therefore he has endorsed thereon that those are not admitted by him. The Enquiry Officer acted as a Prosecutor-*cum*-Judge. Principles of natural justice were not followed in the enquiry. Material witness were not examined and no reasonable opportunity to defend him was exended in the enquiry. He was mentally disturbed when the Checking Squad checked the bus. As such, findings of the Enquiry Officer are baseless. In alternate, his past service record is clean and punishment of dismissal is shockingly disproportionate. Finally, he prayed for reinstatement with continuity of service and full back wages.

3. The State Transport Corporation filed its written statement at Ex. C-7 and traversed all material allegations made by the Complainant. It contended that misconducts noticed by the Checking squad were grave and serious and, threfore a chargesheet was served upon him. Spot statements were recorded as it is and were not fabricated. The enquiry is altogether fair and proper and principles of natural justices were followed. Statements of passengers were not requited to be proved as the enquiry is a quasi judicial proceeding. Finding of the Enquiry Officer is legal and based on evidence. Besides, it prayed for opportunity to lead evidence in case the enquiry is vitiated by any reason. Complainant's past record is not clean and unblamished. Considering seriousness of proved misconducts he was rightly dismissed. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

4. The Labour Court framed, issued at Ex. O-3 and the parties went to the trial. Complainant's counsel admitted legality of the enquiry *vide* pursis Ex. U-8. The Complainant did not lead oral evidence. The corporation produced entire enquiry papers and Complainant's default card. It too lead oral evidence.

5. The Labour Court on perusal of evidence and hearing both parties firstly held that evidence before Enquiry Officer was insufficient to hold the Complainant quilty as the Complainant was not feeling when the bus was checked. It secondly held that the Enquiry Officers finding that the Complainant intended to misappropriate Corporation's money is perverse as there is no charge of misappropriation against him. It thirdly held that way-bill was prepared properly and there is no breeach of administrative orders. Eventually, it held that dismissal of baseless and perverse finding is liable to be quashed being an unfair labour practice. Ultimately, it allowed the complaint directing reinstatement with continuity of service and full back wages by judgment and order dated 16th July 1994. The same is challenged in this Revision.

6. I heard both sides. Considering rival submissions following points arise for my determination :—

(*i*) Whethere finding of Learned Labour Court that finding of Enquiry Officer is baseless and perverse, is sustainable in law ?

(*ii*) It finding of Point No. 1 above is in the affirmative, whether the Corporation is entitled to lead evidence to substantiate its action ?

(*iii*) Whether punishment imposed is an unfair Labour practice as alleged ?

(*iv*) Whether impugned decision directing reinstatement with continuity of service and full back wages is legal and proper ?

(*v*) What order ?

7. My findings, on above points, are as under :—

(*i*) No.

(*ii*) Does not survive.

(*iii*) No.

(*iv*) No.

(*v*) The Revision Application is allowed.

**Reasons**

8. It has come on record that Complainant's Advocate filed a pursis at Ex. U-8 that the Complainant does not challenge legality and validity of the enquiry in so far as mechanism thereof is concerned. No oral evidence is led by either of the parties.

9. Shri A. N. Kulkarni, learned law Officer representing the Corporation vehementaly argued that Labour Court cannot sit as an Appellate Authority over finding of the Enquiry Officer and cannot re-appreciate the evidence. Finding can be said to be baseless or perverse when are not supported without evidence. It is not in dispute that the Complainant was on duty on 21st March 1990 on Miraj to Sangalwadi route. There were only 5 passengers in the bus, all of them were issued tickets of less denomination although proper fair was collected from them. A statement of three passengers were recorded on the spot who have stated that tickets of less denomination were issued to them although they paid proper fare. The only defence of the Complainant that he was mentally upset at the time of checking. There is no reason to disbelieve the reporter as well as three passengers whose statements are recorded in presence of the Complainant. Even then, Labour Court has dubbed the findings as baseless and perverse on the ground that no charge of actual misappropriation is levelled aginst the Complainant but conclusion of misappropriation is recorded in the affirmative by the Enquuiry Officer. Mere observations of Labour Court that evidence before the Enquiry Officer was insufficient without any plaussible reasons thereof, are of no conseuqunces. In fact, sufficiency or otherwise evidence before the Enquiry Officer cannot be decided by Labour Court. Thus, the Labur Court must read the entire evidence on record in taking the view that findings of the Enquiry Officer are baseless and perverse. On the contrary, the findings are well supported by statements of passengers and falcity of defence.

10. Shri Kulkarni further argued that wording of misconduct under item 7 (j) itself implies of dishonesty. It element of dishonesty is withdrawn from said miscoduct, there will be misconduct at all. Misconduct under item 12 (b) pertains to fraud, dishonesty or misappopriation of all kinds. However, misconduct under item 7 (j) pertains to a specific kind of dishonesty. Therefore, impugned finding of Labour Corurt that misconduct of dishonesty is not proved as no charge of dishonesty is levelled in the chargesheet, cannot stand. He further added that no opportunity to substantiate the charge was given although specifically pleaded in the written statement (Ex. C-7).

11. Shri Patil, learned advocate representing the Complainant replied that the Complainant had no intention to misappropriate Corporation's money. Deficit fare of 95 paise was recovered from him on same day and, therefore, alleged charge of misappropriation or dishonesty fails. He further added that Complainant's past record was not considered while emposing punishment of dismissal and hence dimissal order is rightly set-aside. Hence placed reliance on decision in *The Mill Manager, Savatram Ramprasad Mills V/s The Industrial Court, Nagpur reported in M.R.T.U. and P.U.L.P Cases at page 293.* Finally, he supported impugned decision.

12. It is striking to note that Learned Labour Court has altogether ignored material pieces of evidence *i.e.*statements of 3 passengers recorded on the spot. Thus, three passengers have categorically stated that they paid proper fare but tickets of less denomination were issued to them. In addition, it needs to be appraised that unpunched tickets of 95 paise were collected from the Complainant and issued to the passengers. Learned Labour Court has simply observed that the Complainant has denied correctness of statements of passengers recoroed on the spot and only the reporting authority is examined in the enquiry. Hon'ble Apex Court in *State of Haryana V/s Rattansing reported in AIR 1977 s. c. at page 1512* has held that strict and sophisticated rules of evidence under the Evidence Act may not apply in a domestic enquiry and material which is logically probative for prudent man, is permissible. Relying on those observations, it is held in *Pandurang Wani V/s Divisional Controller, MSRTC, Dhule and Ors reported in 1995 I CLR at page 1052* (*Bombay H. C.*) that reliance on previously recorded statements of passengers without examining them in the domestic enquiry does not amount to breach of principles of natural justice. It is glaring to note that the Complainant has nowhere denied recording of the statements of there passengers in his presence on the spot but he has simply denied correctness thereof. In such circumstances, facts still remain that three passengers stated on the spot that they paid proper fare but tickets of less denomination were issued. I, therefore, find that Labour Court's finding that finding of Enquiry Officer is baseless and perverse, is without any basis. I am awares of limited jurisdiction under section 44 of the M. R. T. U. and P. U. L. P. Act. However, Larned Labour Court has recorded the finding without applying its mind to the real question of controversy and the evidence. It will not be exageration to say that it has altogether ignored material evidence or record and jumped to a baseless conclusion. Complainant Advocate Shri Patil tried to canvas that non examining of respective passengers is fatal by placing reliance of the decision of Hon'ble Apex Court in *Hardwari Lal V/s State of U. P. and Ors. reported in 2000 I LLJ S. C. at page 239* (*495*). However those observations are of no help as the Complainant admits recording of statements of passengers on the spot but simply denies correctness thereof. The only defence of the Complainant is that he was mentally disturbed. But the facts notices on the spot by Checking squad are nowhere disturbed by such defence.

13. To summarise, statements of three passengars recorded on the spot categorically establishg that the Complainant issued tickets of less value though collected proper fare. Further fact of collecting unpunched tickets of 95 paise from the Complainant and issuing them to the passengers supports report of the Checking Squad. Therefore, the only logical and probable conclusion is that the Complainant issued tickets of less denomination though collected

full fare threof. Eventually, finding of Labour Court that finding of Enquiry Officer is baseless and perverse, is altogether unsustainable in law. Learned Labour Court has not applied its mind to the real question of controversy as well as evidence and its finding is totally unjustifiable *i. e.* perverse. On the contrary, finding of the Enquiry Officer is based on proper evidence and well justifiable Accordingly, I answer Point No. 1 in the negative.

14. Corporation's Law Officer Shri Kulkarni further argued that the learned Labour Court ought to have extended opportunity to the Corporation to justify its action after coming to the conclusion that findings of the Enquiry Officer is baseless and perverse. I do not wish to enter into that controvary as I have held, while answering Point No. 1 that finding of the Enquiry Officer is legal and justifiable. As such, Point No. 2 does not suvive. I answer the same accordingly.

15. Shri Kulkarni argued in the second phase that a conductor is the only source of income for the Corporation and enjoys post of trust and confidence. Consequently, he cannot be extened any misplaced simpathy. couantum of misappropriated amount is of no consequence.Besides, he was committed monetary misconduct in the past. It has specifically stated in the dismissal order that dismissal is for dis-honesty. Consequently, it cannot be said that there is minor misconduct and punishemnt of dismissal is shockingly disproportionate. Complainant's past record was considered and observation to that effect are made in the dismissal order. In support of his arguments, he placed reliance on the decision of Hon'ble Apex Court in *Janata Bazaar V/s Secretary reported in 2000 (ii) CLR at page 568 and V. Ramana V./s Andra Pradesh State Road Transport Corporation, Visakhapatnam Region and Ors. reported in 2002 (1) LLM-121 (A. P. H. C.)*

16. Advocate Shri Patil replied that the Complainant is in employment by virtue of inter-locutory order passed by the Labour Court on 28th December 1990 and has not committed similer misconduct again. Therefore, he should not be awarded punishment of dismissal *i. e.* economic death. In addition, he is not charged with dis-honesty under Clause 12 (b) of Discipline and Appeal Procedure.

17. Misconduct under Clause 12 (b) pertaint to fraud, dishonesty, and misappropriation of all kinds. Misconducts under clause 7 (j) pertains to specific kind of dishonesty *i. e.* under issue of tickets. Under issue of tickets itself implies that there is a dishonesty. Any other interpretation will be contrary to the meaning thereof. Therefore, observations of learned Labour Court that there is no specific charge of misappropriation and hence finding of Enquiry Officer that Complainant intended to misappropriate the amount is beyond the scope of chargesheet, cannot stand for a moment. On the contrary, logical and the only inference is that the Complaiant intended to misappropriate the amount and hence issue tickets of lesser value than the amount of fare collected from the passengers. I, therefore, find that the Enquiry Officer has rightly held the Complainant gulty of misconduct of dishonesty and misappropriation.

18. It is held in *Janata Bazaer's case* (referred supra) that when misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also observed that there is no question of considering past record in case of proved misappropriation. It is discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute penalty imposed by the employer, in such cases. Cuanfum of misappropriated amount, therefore, is of no consequences and punishment of dismissal cannot be said to be disproportionate. Such observations are made in *V. Ramana's* case (referred supra). I, therefore hold that the punishment imposed is not an unfair labour practice. Accordingly, I answer Point No. 3 in the negative.

19. To conclude, finding of the Enquiry Officer are well commensurate with evidence brought before him. Non-examination of passengers is no consequence as the Complainant admitted fact of its recording on the spot. His peculier defence *i. e.* he was mentally disturbed, cannot take him out from the misconduct. Under issue of tickets *i. e* Lesser value than amount of fare collected from the passengers implies dis-honesty and misappropriation. It is neither mandatory nor necessary to charge him sapartely for misappropriation and dishonesty. Proved misconduct is grave and serious. He is holding post of trust and confidence. His past record is connected with monetary misconducts. In such background, his reinstatement will be amounting to extending misplaced sympathy which is totally uncalled for as held by Hon'ble Apex Court in Janata Basaar's case (referred supra) Therefore, impugned decidision allowing entire complaint cannot survive. Accordingly, I answer Point No. 4 in the negative and pass following order :—

**Order**

(1) The Revision Application is allowed.

(2) Impugned judgment and order directing reinstatement with continuity of srvice and full back wages, is set-aside.

(3) The Complaint is dismissed.

(4) This order shall be in force with effect from 8th April, 2002.

(5) Parties shall over thier own costs throughout.

C. A. Jadhav.
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 8th March 2002.

V. D. Pardeshi,
Asstt. Registrar,
Industrial Court, Kolhapur.

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**BEFORE THE INDUSTRIAL COURT, MAHARASSTRA AT KOLHAPUR**

COMPLAINT (ULP) No. 57 OF 1995.—Shri Bapu Balu Davane, At Ward No. 9 Kamgar Chawl, Room No. 15, Ichalkaranji.—*Complainant—Versus*—The Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji, Dist. Kolhapur—*Respondents.*

In the matter of Complaint u/s 28 (1) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocates*— Shri N. A. Ramtierhakar, Adv. for the Complainant

Shri R. L. Chavan, Adv. for the Respondent.

**Judgment**

This is a Complaint pupported to be under section 28 (1) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Complainant is serving with the Respondent Municipal Council as a Plumber. Senior Plumber Shri Ghalsasi retired on 31st January 1995 Eventually, the Council's Chief Officer ordered to keep charge of Sr. Plumber with Shri Badiwale. Council's seniority List shows that the Complainant has passed Vth Standard and is at Sr. No. 2 Shri Badiwale is S. S. C. passed I. T. I. Fitter Course and is at Sr. No. 7.

3. It is case of the Complainant that he is senior most plumber and ought to have been promoted on retirement of Senior Plumber Shri Ghalsasi. But Council' s Chief Officer promoted Shri Badiwale who is junior to him *vide* order dated 1st Februry 1995. Chiief Officer's order promoting Shri Badiwale by superseding is an unfair labour practice. Eventually, he prayed for declaration of requisite unfair labour practice, setting aside order of promotion dated 31st January 1995 direction to the Council to promote him as Senior Plumber with effect from 31st January 1995 and other 31st January 1995 and other consequential reliefs.

4. The Council filed its written statement at Ex. C-4 and traversed some of the material allegations made the Complainant. It contended at the outset that Shri Badiwale is not promoted by Chief Officer' s order dated 31st January 1995. However, he is simply kent in charge of Senior Plumber's post It is case of the Council that senior Plumber's post comes in Grade III and requisite qualification for the same is S. S. C. and experience of plumbing work. The Complainant does not possess requisite qualification and hence Shri Badiwale is eligible to be promotted on the post of senior Plumber. It lastly prayed for dismissal of the complaint.

5. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant prove that the Respondent Council has indulged into an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971 ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Complaint is dismissed.

**Reasons**

7. Allegations in the Complaint are short of unfair labour practice under item 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act and as such, point there of is not framed.

8. It needs to be stated at the outset that the Complainant has nowhere produced alleged order whereby Shri Badiwale is promotted on the post of Senior Plumber. He has produced Chief Officer's order dated 31st January 1995 whereby charge of Senior Plumber's post is kept with Shri Badiwale.

9. Smt. Ramtirthakar, learned advocate representing the Complainant tried to wanvass that Chief Officer' s order 31st January 1995 anounts to promoting Shri Badiwale. I am unable to accept her plea as the order in crystal terms says that Shri Badiwale is kept in charge of post Senior Plumber. It nowhere says that Shri Badiwale promoted on the post of Senior Plumber. Consequently, it cannot be accepted that the Council has promoted Shri Badiwale by superseding the Complainant has indulged into an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Accordingly, I answer Point No. 1 in the negative.

10. No doubt, the Complainant is claiming to be eligible to the promotional post of Senior Plumber, whereas the Council says that Shri Badiwale is entitled to be promoted as has requisite qualification like S. S. C. and passed I. T. I. Course. There is nothing on record to show that Shri Badiwale is promoted on the post of Senior Plumber. In my judgment, therefore, discussing entitlement of respective Claimants on the post of Sr. Plumber is not necessary in this complaint. Suffice to say that Complainant can agitate his grievance of superseding him on acctual of cause of action thereof.

11. In the light of above discussions and finding, I pass following order :-

**Order**

(*i*) The Complaint is dismissed.

(*ii*) No order as to costs.

C. A. Jadhav,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 19th March 2002.

V. D. Pardeshi,
Asstt. Registrar,
Industrial Court, Kolhapur.

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**BEFORE THE INDUSTRIAL COURT MAHARASHTRA AT KOLHAPUR**

REVISION APPLICATION (ULP) No. 72 OF 1999.—Divisional Traffic Officer, M. S. R. T. Corporation, Kolhapur Division, Kolhapur.—*Petitioner—Versus*—Tukaram Dnyandeo Dighe, At Post Wadegaon, Tal. Sangola, Dist. Sholapur.—*Respondent.*

In the matter of revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocates.*— Shri M. G. Badadare, Advocate for the Petitioner.

Shri A. G. Pansare, Advocate for the Respondent.

**Judgment**

(Dictated in open Court)

This is a Revision by an Employer Maharashtra State Road Transport Corporation challeging legality of judgment and order passed in complaint (ULP) No. 221 of 1997 by the Labour Court, Kolhapur, whereby he is permanently restrained from terminating services of his employee.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant started working as a driver under present Petitioner) (hereinafter referred to as the State Road Transport Corporation). He was served with a chargesheet dated 2nd September 1994 mainly alleging misconduct of rash and negligent driving. Then an enquiry took place. The Enquiry Officer held that charges of misconducts are proved. Ultimately, he was served with show cause notice proposing punishment of dismissal. The Complainant then filed above complaint challenging enquiry and findings thereof on all possible grounds. He then claimed reinstatement, continuity of service and full back wages.

3. The Road Transport Corporation denied all allegations of unfair labour practices contending that the Complainant committed acts of serious misconduct and hence an enquiry was held. In the enquiry, all charges were proved and therefore proposed action of dismissal is just and proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

4. The Labour Court framed the issues and the parties went to the trial. The Complainant admitted mechanism of the enquiry. Both parties did not lead oral evidence. The Corporation produced entire enquiry papers and Complainant's default card on record.

5. The Labour Court on perusal of evidence and hearing both parties firstly held the findings of the Enqiry Officer are not perverse but are well justifiable. As regards proportionality of punishment, it relied on a decision in *Divisional Controller, MSRT Corporation Bhandara* V/s. *Gulab Bhandarkar reported in 1998 Mah. Law Journal at page 818.* It then held that proposed punishment of dismissal is an unfair labour practice under item 1(b) and (g) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Ultimately, it allowed the complaint by permanently restraining the Corporation from terminating services of the Complainant pursuent to the show cause notice in question, *vide* judgment and order dated 21st April 1999. The same is challenged in this Revision.

6. I heard both advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of learned Labour Court that proposed punishment is disproportionate, is legal and proper ?

(*ii*) Whether final order restraining the termination is legal and proper ?

(*iii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No. It is modified.

(*iii*) The Revision Application is partly allowed.

**Reasons**

8. It needs to be stated at the outset that the Complainant has not filed counter Revision challenging finding of learned Labour Court that finding of Enquiry Officer is legal and proper. As such, finding of Labour Court that misconduct alleged is proved, is now conclusive and the only material question to be decided is quantum of punishment.

9. Shri Badadare, learned advocate representing the Respondent Corporation vehemently argued that the Complainant was so rash and negligent that he collied with a car coming form opposite side, whereby one passenger of the car was injured and other died. Therefore, Complainant's reinstatement will be very dangerous for the safety of the passengers. There was a steep blind curve in Bhandarkar's case and hence liniency was show. But such are not the facts of case in hand. The Labour Court misapplied decision in Bhandarkar's case universaly.

10. In Bhandarkar's case, High Lordship has clearly observed that the case of an employee who commits a misconduct on one occasion is certainly different from that of an employee who has been charged on several occasions for misconduct and misconduct proved against him. His Lordship has specifically observed that past record serves as a barometer to consider the nature of punishment which is to be imposed. In the present case, Complainant's record is clean. There is only one adverse entry of an accident, which is subject matter of this case. Therefore, learned Labour has rightly relied on decision in Bhandarkar's case and held that proposed punishment is disproportionate. Accordingly, I answer point No. 1 in the affirmative.

11. Advocate Shri Badadare then pointed out that back wages were refused in Bhandarkar's case. In this case, the Complainant is on duty by virtue of labour Court's interim order. The Complainant must meet with some punishment as is found to have committed requisite misconduct. As such, final order be suitably modified so that the Corporation can take suitable action against the Complainant.

12. Shri Pansare, learned advocate representing the Complainant could not deny above submission.

13. In Bhandarkar's case, reinstatement without back wages is upheld. In this case, the Complainant is on duty by virtue of interim order. He has to be punished as the misconduct is proved. Therefore, final order needs to be modified granting liberty to the Corporation to impose appropriate punishment otherwise than of dismissal or discharge. I answer point No. 2 accordingly and pass following order.

**Order**

(*i*) The Revision Application is partly allowed.

(*ii*) Final order passed by learned Labour Court is modified. The Respondent State Road Transport Corporation is restrained from terminating services of the Complainant pursuent to the show cause notice in question, however, is at liberty to impose any other appropriate punishment.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur.
Dated the 7th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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## IN THE INDUSTRIAL COURT MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 436 OF 1994.—General Secretary, Raste Va Pathandhara Mazdoor Sangh, H. No. 2969, Athlye wada, Near Hotel Vihar, Ratnagiri.—*Complainant—Vs.*— (1) Superintending Engineer, Sarvajanik Bandhakam Vibhag, Ratnagiri.—*Respondent No. 1,* (2) Executive Engineer, South Ratnagiri Sarvajanik Bandhkamg Vibhag, Ratnagiri—*Respondent No. 2,* (3) Executive Engineer, North Ratnagiri Sarvajanik Bandhkam Vibhag, Chiplun, Dist. Ratnagiri.—*Respondent No.3*, (4) Executive Engineer, National Highway Dn. No. 17, Sarvajanik Bandhkam Vibhag, Ratnagiri—*Respondent No. 4.*

In the matter of Complaint U/s. 28(1) read with items 5, 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocate*.— Shri D. S. Desai, Advocate for the Complainant.
Respondents and their Advocate absent.

### Judgment

This is a Complaint under section 28(1) read with items 5, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. It is case of the Complainant that it is registered under the Trade Unions Act and represents mazdoors working under the Respondents. The Respondents are mainly entrusted with work of preperation and maintenance of roads. Government of Maharashtra constituted an Arbitration Committee and the Committee gave an Award which is popularly known as Kalekar Award. As per the Award the Respondents are under the obligation to extend notified Government and public holidays to all the employees who are taken on converted Regular Temporary. But the Respondents are not allowing respective employees to enjoy notified Government and Public holidays and deducting wages of those days. Respondent's acts are an unfair labour practice. Eventually, it has claimed declaration of unfair labour practice, other directions and consequential reliefs.

3. Learned Asstt. Government Pleader put appearance on behalf of the Respondents but failed to file written statement. Hence the complaint proceeded expert against them.

4. Now, following points arise for my determination :—

(*i*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971?

(*ii*) What order ?

5. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Application is allowed.

### Reasons

6. The complaint is short of unfair labour practices under items 5 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. As such, points thereof are not framed.

7. The Complainant union has filed affidavit of its General Secretary at Exh. U-10 and has put oath in support of averments in the complaint.

8. I also perused service conditions of the employees of C.R.T. establishment and the settlement (Copies thereof were shown by the learned Advocate of the Complainant). It is agreed that respective employees will be entitled to notified Government and public holidays. The Complainant has produced copy of letter dated 2nd May 1994 whereby Sub-Divisional Engineer, Khed (Ratnagiri) has objected enjoyment of public holidays. His such act is contrary to the Kalelkar Award and settlement thereof.

9. Affirmation of Complainant's Secretary stands unrebutted. There is no reason to refuse or disbelieve his unrefuted testimony. The same is corborated by action of Sub-Divisional Engineer.

10. In the background of above facts, I hold that the Complainant Union has proved the unfair labour practice. Accordingly, I answer point No. 1 in the affirmative and pass following order :—

**Order**

(*i*) The Complaint is allowed.

(*ii*) It is declared that Respondents 1 to 4 have engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) The Respondents 1 to 4 are directed to cease and desist from engaging such unfair labour practice forthwith.

(*iv*) Respondents 1 to 4 are directed to observe strictly directions in Kalelkar Award regarding extension of paid holidays to the requisit employees.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 22nd March 2002

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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## BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 429 OF 1996.—Divisional Controller, M.S.R.T. Corporation, Kolhapur Division, Kolhapur.—*Petitioner Vs.*—(1) Shri Balvant Baburao, Jadhav, R/o. Opposite House No. 34/35, Jadhavwadi, Opposite Shahu Market Yard, Kolhapur, (Since deceased heirs brought on record as under, (*i*) Smt. Rajashri Balasaheb Jadhav, (*ii*) Shri Prabhakar Balasaheb Jadhav, (*iii*) Shri Sudhakar Balasaheb Jadhav, (*iv*) Kumari Manisha Balasaheb Jadhav—*Respondents.*

In the matter of Revision under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocate*.— Shri M. G. Badadare, Advocate for the Petitioner.

Shri A. T. Upadhye, Advocate for the Respondents.

### Judgment

This is a Revision by an employer State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 157 of 1990 by Labour Court, Kolhapur, whereby a declaration of unfair labour practice and consequential directions are given :—

2. Admittedly, one Balvant Baburao Jadhav original Complainant (now deceased) started working with the Road Transport Corporation in the year 1966. He passed Assistant Traffic Inspector Examination and then was promoted on the post of Assistant Traffic Inspector in the year 1984. He was dismissed with effect from 1st July 1985 due to unauthorised absence from duty but then was reinstated as per orders in Departmental Appeal by stopping increments for 2 years. The Corporation then served chargesheet dated 22nd October 1986 on him alleging unauthorised absence from 20th July 1986 to 4th September 1986 at Gaganbavada Depot. Thereafter, an enquiry commenced. He appeared in the enquiry and sought some adjournments. The enquiry was kept on 13th August 1986, however he did not attend. Eventually, enquiry proceeded in his absence. The Enquiry Officer found him guilty of the misconduct and finally he was terminated on 28th November 1988. His first departmental appeal was dismissed on 3rd March 1989 whereas second on 10th April 1989.

3. The Complainant filed above complaint on 7th September 1990 contending that there is canteen holders in Corporation's premises at Gaganbavada Depot. Canteen holder used to teather his bullock in Corporation's waiting shed during rainy season and in night time. He (Complainant) then asked the canteen owner not to teather the bullock in Corporation's Shed. But the canteen holder threatened to kill him. As such, he was much afraid. He complained with the police as well as higher authorities of the Corporation. However, no positive action was taken. The canteen holder continued to give the threats. He then requested the Corporation to transfer him elsewhere. Eventually, he was afraid to join duties at Gaganbavada Depot and remained absent. Thus, there is plausible reason for absenteesm. But the Enquiry Officer did not consider the same.

4. It is further case of the Complainant that his near relative expired on 13th August 1988 and hence was unable to attend the enquiry. Even then the Enquiry Officer proceeded further in his absence. No opportunity to cross examine Corporation's witness was given to him and hence the enquiry is not legal and proper. He explained all such circumstances in the show cause notice but those were not considered. Therefore, order dismissing him was an unfair labour practice under items 1(a), (b), (d), (e) and (f) of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

5. It is further case of the Complainant that he was bonafidely prosecuting departmental appeals and hence delay caused in filing the complaint be condoned.

6. On above averments, the Complainant prayed for requisite unfair labour practice direction to reinstate him with continuity of service and other consequential reliefs.

7. The Corporation filed its written statement at Exh. C-8 and contended at the outset that the complaint is barred by limitation. It is case of the Corporation that the Complainant was in habit of remaining absent. Previously he was dismissed on same ground but reinstated with stoppage of two increments. The Complainant applied for leave from 8th August 1986 till transferred elsewhere but the reason was not genuine and hence leave was rejected. The Complainant was aware of the date of the hearing of enquiry but remained absent. Transfer from Gaganbavada Depot cannot be a *bonafide* reason for absenteesm. No communication was made on 13th August 1988 before the Enquiry Officer. Considering Complainant's past record, punishment of dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

8. The Labour Court then framed issues at Exh. 9 and the parties went to the trial. The Complainant then died on 6th July 1995 and his heirs brought on record. His heirs then admitted legality of the enquiry. No oral evidence was adduced by either parties. The Corporation produced entire enquiry papers and Complainant's default card.

9. The Labour Court on perusal of evidence and hearing both parties, held that charge of absenteesm is proved. It then observed that punishment of dismissal is shockingly disproportionate considering Complainant's service for 22 years. It then held that relief of reinstatement with continuity of service but without back wages is proper. However, it is stated in final order that the Corporation shall disburse all service benefits to legal heirs assuming that the Complainant was in service till his death *i.e.* 6th February 1995. The Labour Court allowed the complaint partly *vide* judgment and order dated 22nd July 1996. The same is challenged in this Revision.

10. I heard both Advocates. Considering rival submissions, following points arise for my consideration :—

(*i*) Whether findings of the Labour Court that punishment of dismissal is shockingly disproportionate, is sustainable in law ?

(*ii*) Whether clause (*ii*) of impugned final order is legal and proper ?

(*iii*) What order ?

11. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The Revision is partly allowed by correcting clause (*ii*) of impugned final order.

**Reasons**

12. It needs to be stated at the outset that the legal representative of the deceased workmen have not challenged findings of learned Labour Court that charge of absenteesm is proved. Therefore, now said finding has become conclusive. Even otherwise, I perused the reasoning thereof. It is not in dispute that the Complainant was absent from duty from 20th July 1986 to 4th September, 1986 (44 days). Admittedly the Complainant was aware that the enquiry is kept for hearing on 13th August 1988. It appears from the record that Enquiry Officer submitted his report, then a show cause notice of dismissal was issued to the Complainant and the Complainant stated in reply thereof that his sister-in-law died on 13th August 1988. Thus, the Complainant stated for the first time on 21st October 1988 regarding his absence on 13th August 1988 before the Enquiry Officer and that too in reply to show cause notice of dismissal. Consequently, it cannot be held that no opportunity of hearing was given to the Complainant. On the contrary, inference is otherwise. Besides, a plausibility of the Complainant's explanation is material and that will be take into consideration while deciding propertionality of the punishment. Thus, the Labour Court has rightly held that affirmative finding of the Enquiry Officer is fair and proper.

13. Shri Badadare, Learned Advocate representing the Corporation vehementaly argued that the Complainant was head at Gaganbavada Depot and was expected to be puncutal. In the past he was dismissed on the ground of absenteesm. His past record is full of dismisconducts and it was case of chronic abseteesm. Labour Court extended misplaced sympathy by directing reinstatement to him. Shri Badadare further explained that observations of reinstatement without back wages are made in paragraph No. 21 of the judgment. Even then, all service benefits till the death are granted in clause (*ii*) of impugned order. Those observations in paragraph No. 21 and clause (*ii*) of impugned final order are contrary to each other.

14. Shri Upadhye, Learned Advocate representing the heirs of the Complainant replied that the Complainant time and again requested for transfer elsewhere. The Complainant was transferred to Kurundwad Depot after completion of enquiry and worked at Kurundwad Depot till dismissal. In such circumstances, reason of not working at Gaganbavada needs to be perused. Canteen owner at Gaganbavada Depot threatened to kill him. Canteen owner was local person and the Complainant was stranger one. Naturally, the Complainant was afraid and developed a sense of unsecurdness. Absenteesm is for 44 days only and is coupled with all plausible reasons. Therefore, Learned Labour Court has rightly held that the punishment is shockingly disproportionate.

15. The Complainant was dismissed on the ground of absenteesm in the year 1984. No doubt, there are other misconducts to his credits but ground put forth for absenteesm at Gaganbavada Depot is plausible. He has stated in reply to the chargesheet about the behaviour of the canteen owner. Consequently, it is difficult to accept that it is a case of chronic abseteesm. Later on the Complainant has worked punctually at Kurundwad Depot till his dismissal. In such circumstances, extreme penalty of dismissal was certainly disproportionate. Accordingly, I answer point No. 1 in the affirmative.

16. As regards punishment, Learned Labour Court has rightly held that reinstatement without back wages will be proper. But it appears that it inadvertantly stated in clause (*ii*) of the final order that all service benefits should be extended to the Complainant as if he was deemed to be in service till his death *i.e.* 6th February, 1985. In fact in the light of observations of paragraph No. 21 of judgment, death benefits ought to have been given as if the Complainant was in service till his death. As such, clause (*ii*) of final order needs to be set aside. Accordingly I answer point No. 2 in the negative.

17. To summarise, explanation for the absenteesm is plausible and *bonafide*. The Complainant was much afraid of the canteen owner's threat. His explanation is not after thought. Later on he worked puncually at Kurundwad Depot. Therefore, punishment is shockingly disproportionate and order of notional reinstatement with continuity of service but without back wages is proper. Direction in clause (*ii*) of impugned final order is contrary to the observations made in paragraph No. 21 of the judgment and needs to be set-aside. Eventually, the Revision needs to be allowed technically.

18. To conclude, I pass following order :—

**Order**

(*i*) The Revision Application is partly allowed.

(*ii*) Clause (*ii*) of impugned final order is set-aside by maintaining rest of the order.

(*iii*) The Respondent is directed to disburse all death benefits to heirs of the Complainant as if the Complainant was in service till 6th February, 1995. The Complainant is not entitled to back wages from the date of dismissal till his death.

(*iv*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 6th March, 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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